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APPENDIX

Supreme Court, U.S.
FILED
JUN 18 1971
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Supreme Court of the United States

OCTOBER TERM, 1970

70-5082

No. ~~6741~~

LAVERNE CARTER, ET AL. *Appellants,*

v.

WAYNE STANTON, ET AL., *Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

JURISDICTIONAL STATEMENT FILED MARCH 16, 1971
PROBABLE JURISDICTION NOTED MAY 24, 1971

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APPENDIX

Relevant Docket Entries

Date	Proceedings
2/27/70	Petition for temporary restraining order and complaint for preliminary injunction and permanent injunction and declaratory relief by three judge statutory court filed. Plaintiffs file motion for temporary restraining order without notice. Plaintiffs file memorandum in support of necessity of convening a three-judge court. Summons issued. Notice to Clerk filed.
3/13/70	Defendants Sterret, Curless, Hilger, Sweigard, Stanton and Watson file opposition to plaintiff's application for three-judge court, c/s.
3/18/70	Plaintiff files Supplementary Memo in Support of Application for a Three Judge Court. C/S.
3/27/70	Defendent Department of Public Welfare files supplementary memorandum in reply to and in opposition of plaintiffs' application for a three-judge court, c/s.
4/2/70	Court enters Order on Plaintiff's motion for temporary restraining order without notice. DENIED.
4/8/70	Order dated April 6, 1970, from Luther W. Swygert, Chief Judge of the Seventh Circuit filed designating the Honorable Otto Kerner and the Honorable James E. Noland to serve with the Honorable William E. Steckler as members of a three-judge panel to hear and determine this cause.
4/13/70	Plaintiffs file motion to convene a three-judge court, to allow a class action, to issue a temporary restraining order, and for a hearing thereon and to set a date for hearing on preliminary injunction with brief in support thereof, c/s.

Date	Proceedings
5/8/70	Defendant Stanton files motion to dismiss, c/s. Defendant Sterrett files motion to dismiss with brief in support thereof, c/s.
6/24/70	Plaintiffs file brief in opposition to defendants' motions to dismiss. c/s.
6/26/70	Plaintiff files interrogatories to defendant Stanton, c/s. Plaintiff files interrogatories to defendant Sterrett, c/s.
7/7/70	Defendant Stanton files objections to plaintiffs' interrogatories numbered 1, 2, 4, and 5, c/s.
7/8/70	Defendant Stanton files answers to interrogatories numbered 3 and 6.
7/15/70	Defendant Sterrett files answers to interrogatories numbered 1 through 6, c/s.
10/22/70	Court enters Order setting November 23, 1970 at 10:00 a.m. for the hearing on pending motions, and on the merits.
11/17/70	Plaintiffs file motion to introduce depositions into evidence, c/s.
11/23/70	Depositions of Alma Black, Martha Couch, Toni Davis, Donna Anderson, Elener McIntyre, Sharon Wright and Dora King taken on behalf of the plaintiffs filed. Depositions of Ruth Massie and Anna Cooper taken on behalf of the plaintiffs filed. Depositions of Lucy Hall, Alice Hall, Sandra Watkins and Marthena Tanner taken on behalf of the plaintiffs filed.
11/23/70	Hearing held on merits of case. Evidence of plaintiffs and defendants heard. Court adjourned.
11/24/70	Depositions of Patricia Benson, Thelma Hunter and Christine Buford taken on behalf of the plaintiffs filed.
11/24/70	Court enters entry on motions to dismiss. Motion of defendants to dismiss this complaint for

Date	Proceedings
	failure of federal jurisdiction is hereby GRANTED. This case is ordered dismissed. O. B. Vol. 14, P. 6828.
12/1/70	Defendant Stanton files motion to amend entry, c/s.
12/2/70	Court enters memorandum of conference held on October 27, 1970, with respect to defendants' motion for protective order.
12/3/70	Depositions of SUSAN LEE BOWMAN, CARLENE DAVENPORT, ANNA JENNETTE PATRICK taken on behalf of the plaintiffs filed.
12/11/70	Court enters amended entry on motions to dismiss. O. B. Vol. 14, P. 6870.
12/24/70	Laverne Carter, Susan Bowman, Dorothy Enoch, Lucy Hall and Brenda Steele file motion for leave to proceed and appeal in forma pauperis to the United States Supreme Court from the Court's amended judgment of December 11, 1970, c/s.
1/7/71	Court grants Plaintiff's motion for leave to proceed and appeal in forma pauperis. ORDERED that appellants may proceed and appeal in this cause without the repayment of any fees, costs or bonds.
1/19/71	Notice of Appeal to the Supreme Court of the U. S., filed by Appellants. C/S.
3/17/71	Transcript on appeal mailed to Supreme Court.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, SUSAN BOWMAN, EVA CARVER, DOROTHY ENOCK, LUCY HALL and BRENDA STEELE, each individually, on behalf of their respective minor children, and on behalf of all others similarly situated.

Plaintiffs

vs.

WAYNE STANTON, Director, Marion County Department of Public Welfare, Marion County, Indiana, his agents, employees and successor,

and

WILLIAM STERRETT, Acting Director, Indiana State Department of Public Welfare, his agents employees and successor,

and

ROBERT M. CURLESS, MARION M. HILGER, the Very Reverend Monseignor W. EDWARD SWEIGARD, ARVELLA M. STANTON, and ROBERT G. WATSON as members of the Indiana State Board of Public Welfare and their agents, employees and successors,

Defendants

CIVIL ACTION
FILE NO. IP 70-C-124

PETITION FOR TEMPORARY RESTRAINING ORDER AND COMPLAINT FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION AND DECLARATORY RELIEF BY THREE JUDGE STATUTORY COURT

1. This civil action for injunctive and declaratory relief is authorized by 28 U.S.C. 2201 and 42 U.S.C. §§ 1981, 1983 and 2000(d) and seeks to obtain relief and redress violations of rights guaranteed to the plaintiffs by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. §§ 1981 and 1983, and by Title IV of the Social Security Act, as amended, 42 U.S.C. §§ 601 et seq. Jurisdiction is conferred upon this Court and invoked under 28 U.S.C. §§ 1343(3) and (4), 2201 and 2202.

REMEDY SOUGHT

2. Plaintiffs seek a judgment declaring (a) *Burns Indiana Rules and Regulations* §§(52–1001)–2(b) a copy of which is attached as Exhibit A and hereinafter referred to as *R & R* and Chapter III, section C, III B 2 of the State of Indiana Public Assistance Manual a copy of which is attached as Exhibit B, both of which require a six (6) month separation of parents before assistance may be granted to dependent children, and which allow undue discretion in determining who may file an application for public assistance for dependent children, and (b) the practices of the Marion County Department of Public Welfare of requiring a parent to file for a legal separation or divorce before the parents' children may receive assistance and of refusing to allow persons who have not proven a bona fide separation from even filing an application for public assistance for dependent children as unconstitutional and void in that they (i) deny to the plaintiffs' due process and the equal protection of the law, (ii) infringe upon the plaintiffs' right to privacy, and (iii) are unlawful and void in that they violate the statutory law of the United States. The plaintiffs also seek a temporary and permanent prohibitory injunction restraining defendants from applying, enforcing, implementing or continuing to give any force to these rules, regulations, and practices. A three judge Court has been requested pursuant to 28 U.S.C. §§ 2281 and 2284.

THREE-JUDGE COURT

3. Because plaintiffs claim that portions of the regulations of Indiana State Department of Public Welfare and practices of its employees and agents violate provisions of the Fourth and Fourteenth Amendments to the United States Constitution, plaintiffs hereby request that a three judge district court be convened pursuant to 28 U.S.C. §§ 2281 and 2284.

PLAINTIFFS

4. Plaintiff Laverne Carter is an adult bona fide resident of Marion County, Indiana, whose husband deserted her on October 24, 1969, and left her with two (2) minor dependent children. Other than for the fact that she has not been separated from her husband for a period of more than six months, she and her children are eligible to receive Aid to Dependent Children [hereinafter referred to as ADC]. On or about January 12, 1970, she was denied public assistance by the Marion County Department of Public Welfare until either (a) she filed for divorce or legal separation or (b) she had been separated from her husband for six months. Her children have no other means of adequate support. Because of the imposition of these two requirements, she and her children are suffering irreparable injury by being deprived of adequate funds on which to live.

5. Susan Bowman is a bona fide resident of Marion County, whose husband separated from her on or about November 12, 1969, leaving her with one minor dependent child and five (5) months pregnant. Plaintiff has no means of support and her husband has contributed nothing to her. Other than the fact that she and her husband have not been separated for six (6) months, she and her child are eligible for ADC. On or about December 1, 1969, she was denied ADC by the Marion County Department of Public Welfare until either (a) she files for divorce or legal separation or (b) remains separated for six months. Because plaintiff had not been a resident of Indiana for one year she was not able to file for divorce; furthermore, she lacks the funds to file a divorce. Because of the imposition of the six month divorce rule, plaintiff and her children are suffering irreparable injury by being deprived of adequate funds on which to live.

6. Plaintiff Eva Carver is an adult bona fide resident of

Marion County, Indiana, whose husband deserted her on or about October 12, 1969, and left her with the custody of their three (3) minor children. Other than for the fact that she and her husband have not been separated for six months, she is eligible for ADC. On or about January 13, 1970, she applied for ADC in Marion County; on February 12, 1970, the Marion County Department of Public Welfare denied her application for ADC because she had not been separated from her husband for six (6) months. Plaintiff is working part time and has a weekly net income of approximately eighteen dollars ($18). Furthermore, defendants failed to make any investigation of this plaintiff's home situation and thereby failed to take any steps to determine facts on which a finding of emergency and exceptional circumstances could be denied. Because of the imposition of an arbitrary six month requirement and because of the failure to make a home study, plaintiff and her children are being deprived of adequate funds on which to live, and are being caused irreparable injury by the defendants' acts.

7. Plaintiff Dorothy Enoch is an adult bona fide resident of Marion County, Indiana whose husband separated from her on or about January 30, 1970, leaving her with eight minor children. Plaintiff's employment pays her approximately sixty-five dollars per week which payment is not adequate to support her family. Other than the fact that plaintiff has not been separated from her husband for six (6) months she is eligible for ADC. On February 2, 1970, she applied for ADC in Marion County; the Marion County Department of Public Welfare has denied her application because she had not been separated from her husband for six months and informed her she should obtain or file a divorce or legal separation before she would be eligible. Mrs. Enoch however lacks adequate funds to prosecute a divorce. Because of the imposition of this six (6) month rule and the requirement that a divorce or legal separation be filed, the Marion County Department of Public Welfare and Indiana Department of Public Welfare are depriving the plaintiff and her family of adequate funds on which to live and are thus causing them irreparable injury.

8. Plaintiff Lucy Hall is an adult bona fide resident of Marion County, Indiana, whose husband left her on or about February 9, 1970, leaving her with one minor child. Plaintiff has no adequate means of support for either herself or

her child. Other than for the fact that she and her husband have not been separated for more than six months, she and her children are eligible to receive ADC. On or about February 11, 1970, she attempted to apply for ADC in Marion County. The Marion County Department of Public Welfare refused her an application form and told her she must file divorce from her husband or be separated for six months before she could apply for ADC. Because of the imposition of this policy and regulation, plaintiff and her child are suffering irreparable injury by being deprived of adequate funds on which to live.

9. Plaintiff Brenda Steele is an adult bona fide resident of Marion County, Indiana, whose husband forced her and their two (2) minor children out of their home on or about January 3, 1970. Plaintiff is now raising these two children and has no income to support her family. On January 20, 1970, plaintiff applied for ADC in Marion County; her application for ADC was then denied by the Marion County Department of Public Welfare because she had not been separated from her husband for six months. Defendants failed to make any investigation of this plaintiff's home and family situation and thereby failed to determine facts on which a finding of no exceptional circumstances or no emergency could be based. Because of this practice, i.e. the failure to make home studies, and because of the imposition of arbitrary six (6) month separation rule, plaintiff and her children are being deprived of adequate funds on which to live and are suffering irreparable injury.

CLASS ACTION

10. Plaintiffs are members of a class of needy mothers with dependent children residing in Indiana and who are eligible for ADC except that they have not been separated from their respective spouses for six (6) months as is required by *R & R* §§(52–1001)–2(b) and the Chapter III, section C III B 2 of the State of Indiana Public Assistance Manual. The persons who constitute this class are so numerous as to make it impracticable to bring them all before the Court, the claims of the plaintiffs are typical of the claims of such persons, the plaintiffs will fairly and adequately represent the interests of such persons, and there are questions of law and fact common to all plaintiffs and such

persons; furthermore defendants have failed to act on grounds generally applicable to the class thereby making injunctive or declaratory relief appropriate to the class as a whole, and the common questions of law or fact predominate over those pertaining to individual members, and therefore a class action is superior to other available methods for a fair and efficient adjudication of the controversy.

DEFENDANTS

11. Defendant Wayne Stanton is the duly appointed and acting Director of the Marion County Department of Public Welfare who has statutory responsibility under *Burns Indiana Statute* §§ 52–1117 et. seq. for administering the public assistance programs in Marion County; he is sued in his official capacity.

12. Defendant William Sterrett is the duly appointed and acting Director of the State of Indiana Department of Public Welfare who has statutory authority in conjunction with the State Board of Public Welfare under Burns Indiana Statute §§ 52–1101 et. seq. for administering the State public assistance program; he is sued in his official capacity.

13. Defendants Robert M. Curless, Marion M. Hilger, the Very Reverend Monseigneur W. Edward Sweigart, Arvella M. Stanton, and Robert G. Watson are members of the Indiana State Board of Public Welfare and have the statutory duty and responsibility under Burns Indiana Statute §§ 52–1101 et. seq. to promulgate rules and regulations governing the administration of the state's public assistance programs; they are sued in their official capacities.

STATEMENT OF CLAIM

14. In order to aid needy persons, Indiana has adopted a public assistance program; because it receives Federal funds and has accepted the provisions of the Federal Social Security Act, the program must comply with relevant Federal law, both statutory and constitutional.

15. In order for children and their parents to receive ADC, certain conditions set forth in *Burns Indiana Rules and Regulations* must be met. One condition is that the child be "deprived of parental support or care by reason of . . . continued absence from the home. . . ." *R & R* §(52–

1001)–1(a). The concept of continued absence is then further defined:

> When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six (6) months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application *may* [emphasis added] be filed and a child may be considered immediately eligible upon a special finding of County Department of Public Welfare setting forth the facts and reasons for such action.
>
> *R & R* §(52–1001)–2(b)

FIRST CAUSE OF ACTION: EQUAL PROTECTION

16. The time restriction in the definition in §(52–1001)–2(b) on its face is unconstitutional in that it invidiously and irrationally classifies parents into two groups—one group containing persons who have been separated from their respective spouses (usually the husband) for less than six (6) months, the other more than six (6) months. This classification is arbitrary and has no rational bearing to the need of plaintiffs and their children for assistance; it arbitrarily singles out the children for assistance; it arbitrarily singles out the children of the plaintiffs and others in their class from other needy children whose parental situation differs only in that their parents have been separated for over six (6) months. Thus it violates the Equal Protection Clause of the United States Constitution's Fourteenth Amendment.

SECOND CAUSE OF ACTION: DUE PROCESS AND EQUAL PROTECTION

17. Section §(52–1001)–2(b) provides that in instances where the parents have been separated for less than six (6) months, a determination that the separation is actual and bona fide must be made before the parent is allowed to even file an application for ADC:

> . . . except that under exceptional circumstances of need and where it is determined that the absence of a

> parent is actual and bona fide an application *may* [emphasis added] be filed and a child may be considered immediately eligible upon a special finding of County Department of Public Welfare setting forth the facts and reasons for such action.
>
> *R & R* §(52–1001)–2(b)

Because the regulation is worded in permissive, instead of mandatory, language, the County Welfare Departments are given an unlawful optional authority to refuse to allow a needy person to even fill out the initial application form.

18. Although §(52–1001)–2(b) contains a provision allowing an application for ADC in exceptional instances, the practice of the Marion County Department of Public Welfare is to exercise its discretion in an arbitrary, capricious, haphazard and unlawful manner with the result that, because of inadequate investigation of the familial situation, eligible individuals are not being allowed to even apply.

19. By having the effect of unfairly depriving such persons of public assistance, this provision violates both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION: RIGHT OF PRIVACY AND EQUAL PROTECTION

20. The defendants maintain a policy of requesting and requiring persons in plaintiffs' class of persons to initiate divorce or legal separation proceedings before they may receive ADC; for various reasons, plaintiffs do not desire or cannot seek a divorce at the present time. This policy and practice requires plaintiffs either to alter their marital status or, alternatively, to encounter severe economic deprivation; thus the defendants acting under color of state law violate plaintiffs' right to privacy guaranteed them by the Fourth Amendment to the United States Constitution.

21. Furthermore, Indiana Law requires that, in order to file for divorce or legal separation, a person must have been a resident of the State of Indiana for one (1) year and of the County wherein the complaint is filed for six (6) months prior to the date of filing. Thus persons who have not satisfied these residency requirements are prohibited from filing and, therefore, by virtue of the defendants' policy of requiring applicants to file for divorce or legal separation, are

prohibited from being considered eligible for ADC. This abridges and violates the plaintiffs' rights under the Equal Protection Clause of the United States Constitution's Fourteenth Amendment and impairs their right to travel.

FOURTH CAUSE OF ACTION:
STATE LAW INCONSISTENT WITH FEDERAL STATUTORY LAW

22. The arbitrary discrimination against the plaintiffs which results from both the enforcement of the Indiana Regulation and the practice of the Marion County Department of Public Welfare violates the intent and purpose of the Social Security Act, 42 U.S.C. §§ 601 et. seq., and the regulations thereunder, viz. that all applicants and recipients be treated equally and be allowed to make applications promptly. Furthermore the widespread practice of the defendants requiring plaintiffs to initiate divorce or legal separations violates the express purpose of the ADC program to help "maintain and strengthen family life," and "to aid in its reconstruction if a breakdown occurs," for it jeopardizes and weakens family life instead of treating the rift as one which could be healed.

NEED FOR RELIEF

22. Defendants' enforcement of this regulation and their policies have caused plaintiffs and their families severe and irreparable injury and extreme hardship, suffering, anxiety, and damage to both their physical and mental well-being by depriving them of adequate food, clothing and shelter; such injury and hardship will continue to be inflicted upon the plaintiffs until this regulation and these policies are declared unlawful and unconstitutional and until the defendants are restrained and enjoined from carrying them out.

23. Plaintiffs have no adequate, plain or speedy relief at law and this suit for injunction is their only means for obtaining relief.

24. This action may be brought and maintained without prior exhaustion of state administrative remedies.

25. There is a high probability that the merits of this complaint will be resolved and adjudicated in the plaintiffs' favor; therefore, there are grounds for granting either temporary restraining order or a temporary injunction against the defendants.

WHEREFORE, plaintiffs, on behalf of themselves, their children, and all others similarly situated, respectfully ask that this Court:

1. Assume jurisdiction of this cause and convene a three judge district court pursuant to 28 U.S.C. § 2281.

2. Enter a temporary restraining order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and a preliminary injunction ordering the defendants to grant ADC financial assistance to the plaintiffs and their children and all persons situated within their class pending determination of this cause.

3. Enter a temporary or preliminary injunction ordering the defendants to grant ADC financial assistance to the plaintiffs and their children and all persons situated within their class pending determination of this cause.

4. Enter a final declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that *Burns Indiana Rules and Regulations* §(52–1001)–2(b) on its face, or alternatively as it is applied, arbitrary, unconstitutional, unlawful and null and void and that the policy of the Marion County Department of Public Welfare of requiring an applicant to file a divorce or legal separation is arbitrary, unconstitutional, unlawful and null and void.

5. Order the defendants to pay plaintiffs and their children and all persons situated within their class all ADC financial assistance to which they would have been legally entitled since the dates of their respective applications.

6. Enter a temporary restraining order pursuant to Rules 65 (b) of the Federal Rules of Civil Procedure and a preliminary and permanent injunction restraining defendants, their successors, agents and employees from refusing and failing to allow persons to apply for ADC, from refusing to find applicants eligible because of the lack of a six month separation, and from requiring applicants to file and seek a divorce or legal separation, and ordering them to consider for eligibility for ADC plaintiffs, their children and all persons similarly situated in their class.

7. Award plaintiffs their costs of this action.

8. Award plaintiffs and all other similarly situated such further and alternative relief as may be just and proper.

Respectfully submitted,

/s/ *David F. Shadel*
DAVID F. SHADEL
Attorney for Plaintiffs

[*Verifications omitted in printing.*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT NOTICE

Plaintiffs, having filed their verified Petition for Temporary Restraining Order and Complaint for Preliminary Injunction and Permanent Injunction and Declaratory Relief, having shown that an emergency now exists, now respectfully request that this Court issue a Temporary Restraining Order without Notice which Order will restrain the defendants from refusing and failing to allow plaintiffs and persons in their class from applying for welfare assistance, from refusing and failing to consider them as eligible until a six month period of separation from their respective husbands has passed, and from requiring that they seek a divorce or legal separation.

Respectfully submitted,

/s/ *David F. Shadel*
DAVID F. SHADEL,
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, ET AL. *Plaintiffs* v. WAYNE STANTON, ET AL. *Defendants*	NO. IP 70-C-124

ENTRY ON
MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT NOTICE

April 2, 1970.

This cause came before the Court on the plaintiffs' motion for a temporary restraining order without notice. The Court having considered the motion and memoranda in support thereof and being duly advised in the premises, concludes that the motion should be, and it is, hereby DENIED.

/s/ William E. Steckler
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

MOTION TO CONVENE A THREE JUDGE COURT, TO ALLOW A CLASS ACTION, TO ISSUE A TEMPORARY RESTRAINING ORDER, AND FOR A HEARING THEREON AND TO SET A DATE FOR A HEARING ON PRELIMINARY INJUNCTION.

On the basis of plaintiffs' heretofore filed Verified Complaint, Memos, and Brief the plaintiffs move this Court:

1) To convene a three Judge Court pursuant to 28 U.S.C. § 2281 and 2284;

2) To determine that this action is a proper class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

3) To issue a temporary restraining order pursuant to 28 U.S.C. § 2284(3) enjoining defendants, their agents, successors, employees, and all persons acting by, through or on their behalf from:

a. Refusing to consider eligibility for public assistance any child on the ground that the child's parents have not been continuously separated for six months or longer;

b. Refusing to consider for eligibility for public assistance any child on the ground that his parents have not initiated action for divorce or legal separation;

c. Refusing from considering within seventy-two (72) hours for eligibility for public assistance the plaintiffs and their families.

d. Refusing to grant public assistance to plaintiffs or others in their class unless a factual finding is made by defendants of the lack of need of plaintiffs and others in their class;

e. Refusing to allow a person to apply for public assistance on the ground that that person has not been separated continuously from her spouse for six months or longer or because she has not initiated action for a divorce or legal separation.

4) After issuance of a temporary restraining order, to set the matter for hearing before the three-judge court on plaintiffs' request for a preliminary injunction.

The grounds for this motion are contained in plaintiffs' verified petition and complaint heretofore filed and constitute further immediate and irreparable harm and injury to the plaintiffs and their families. Unless enjoined, defendants will continue to deny public assistance to plaintiffs physical injury, malnutrition and inadequate clothing and shelter.

Plaintiffs request oral argument.

Respectfully submitted,

David F. Shadel
DAVID F. SHADEL
Attorney for Plaintiffs

[*Certificate of service omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

DEFENDANT WAYNE STANTON'S MOTION TO DISMISS

Defendant Wayne Stanton respectfully moves that the complaint in the above entitled cause be dismissed for the following reasons:

1. The Court is without jurisdiction of the subject matter.
2. The complaint fails to state a claim upon which relief can be granted.

In support of this motion defendant Stanton refers the Court to his brief in support hereof wherein it is shown that plaintiffs' fail to meet the prerequisite of exhausting available administrative remedies and failed to present a substantial constitutional claim.

WHEREFORE, defendant Wayne Stanton prays that the plaintiffs' complaint be dismissed.

RHOADS, LINDER, MEYER & BUEHL
SMITH and JONES

By: *Robert W. Geddes*
ROBERT W. GEDDES, *Attorney*
for Defendant Wayne Stanton

[*Certificate of services omitted in printing*]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

MOTION TO DISMISS

I. The Court lacks jurisdiction over the subject matter.
II. Plaintiff has failed to state a claim upon which relief can be granted.
III. The case at bar is not a proper class action under Rule 23 of the Federal Rules of Civil Procedure.
V. The constitutional claim of the plaintiff is not of paramount importance at this stage of the proceedings.

THEODORE L. SENDAK
Attorney General of Indiana

By: *George M. Curry*
GEORGE M. CURRY
Deputy Attorney General
Assigned to the State
Department of Public Welfare

[*Certificate of service omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

INTERROGATORIES

To: Robert Geddes, Attorney for Defendant Wayne Stanton

The plaintiffs request that the defendant Wayne Stanton answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. What number of applications to the Marion County Department of Public Welfare for Aid to Dependent Children (ADC) have been denied in 1970 for the reason that the applicant had not been separated from her (his) spouse for at least six months?

2. What number of applications to the Marion County Department of Public Welfare for ADC have been approved in 1970 despite the fact that the applicant had not been separated for at least six months?

3. What is the number of appeals filed in 1970 by applicants who were denied ADC because they had not been separated from their respective spouses for at least six months? When was each such appeal filed? When was a hearing held on each such appeal? What was the result of every such appeal?

4. What number of applications to the Marion County Department of Public Welfare for ADC were denied in 1969 for the reason that the applicant had not been separated from her (his) spouse for at least six months?

5. What number of applications to the Marion County Department of Public Welfare for ADC were approved in 1969 despite the fact that the applicant had not been separated for at least six months?

6. What is the number of appeals filed in 1969 by applicants who were denied ADC because they had not been separated from their respective spouses for at least six months? When was each appeal filed? When was a hearing held on each such appeal? What was the result of every such appeal?

Please note that a copy of the answers should be served

upon the undersigned within fifteen (15) days after the service of these interrogatories.

DATED: June 26, 1970.

/s/ *David F. Shadel*
DAVID F. SHADEL
Attorney for Plaintiffs

[*Certificate of service omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[Caption omitted in printing]

DEFENDANT WAYNE STANTON'S ANSWERS TO PLAINTIFFS' INTERROGATORIES NUMBERED 3 and 6

Defendant Wayne Stanton, being first duly sworn upon his oath, submits the following answers to the plaintiffs' interrogatories numbered 3 and 6:

3. I am unable to provide a direct or specific answer inasmuch as the Marion County Department of Public Welfare does not keep a record on this subject. However, I would estimate, to the best of my knowledge, that the number is probably fewer than a dozen. In response to "When was each such appeal filed?", I am forced to answer that I do not know precisely because the Marion County Department of Public Welfare does not provide a separate file on this subject. In answer to the question: "When was a hearing held on each such appeal?", again I am unable to provide a precise answer inasmuch as the county department does not provide a separate file in this matter, nor is any general file maintained on this subject. The hearings are under the supervision and control of the State Department of Public Welfare. In response to the question: "What was the result of each such appeal?", I would say that to the best of my knowledge, the Marion County Department of Public Welfare has been sustained by the State Department of Public Welfare in all of its decisions and actions in this area.

6. I am unable to provide a specific answer to the first three parts of this question because the Marion County Department of Public Welfare does not make a separate recording, nor does it provide a separate record or file relative to this matter. In

response to the question: "What was the result of each such appeal?", I would answer to the best of my knowledge that the Marion County Department of Public Welfare was held to be correct and proper in all of its judgments and decisions in this area.

/s/ Wayne W. Stanton
WAYNE STANTON, *Director, Marion County Department of Public Welfare*

[*Affidavit and certificate of service omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

DEFENDANT WAYNE STANTON'S OBJECTIONS TO PLAINTIFFS' INTERROGATORIES NUMBERED 1, 2, 4 and 5

Defendant Wayne Stanton objects to plaintiffs' interrogatories numbered 1, 2, 4 and 5 for the following reasons:

1. The Marion County Welfare Department does not have a record of the requested information and any attempt to accumulate such information would necessitate extensive research.

2. The research necessary would require reviewing thousands of case files and reinterviewing many of the applicants. This is assuming that the necessary applicants could be relocated which in some cases undoubtedly would be impossible to do so.

3. That in view of the foregoing, answering the subject interrogatories with any degree of accuracy would be oppressive, burdensome and unduly expensive.

WHEREFORE, defendant Wayne Stanton respectfully moves that his objections to plaintiffs' interrogatories numbered 1, 2, 4 and 5 be sustained. In support of these objections defendant Wayne Stanton refers the Court to his affidavit attached hereto and marked "A" and his brief in support hereof.

SMITH and JONES
By: *Robert W. Geddes*
ROBERT W. GEDDES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

INTERROGATORIES

To: George Curry, Attorney for Defendant William Sterrett

The plaintiffs request that the defendant William Sterrett answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. What number of applications for Aid to Dependent Children (ADC) have been denied by the various Indiana counties' Departments of Public Welfare in 1970 for the reason that the applicant had not been separated from her (his) spouse for at least six months?

2. What number of applications for ADC have been approved by the various Indiana County Departments of Public Welfare in 1970 despite the fact that the applicant had not been separated for at least six months?

3. What is the number of appeals filed in 1970 by applicants who were denied ADC because they had not been separated from their respective spouses for at least six months? When was each such appeal filed? When was a hearing held on each such appeal? What was the result of every such appeal?

4. What number of applications by the various Indiana County Departments of Public Welfare in 1969 were denied for the reason that the applicant had not been separated from her (his) spouse for at least six months?

5. What number of applications for ADC were approved by the various Indiana County Departments of Public Welfare in 1969 despite the fact that the applicant had not been separated for at least six months?

6. What is the number of appeals filed in 1969 by applicants who were denied ADC because they had not been separated from their respective spouses for at least six months? When was each such appeal filed? When was a hearing held on each such appeal? What was the result of every such appeal?

Please note that a copy of the answers should be served

upon the undersigned within fifteen (15) days after the service of these interrogatories.

DATED: June 26, 1970.

/s/ David F. Shadel
DAVID F. SHADEL
Attorney for Plaintiffs

[*Certificate of service omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

DEFENDANT WILLIAM STERRETT'S ANSWERS TO PLAINTIFFS' INTERROGATORIES NUMBERED 1 THROUGH 6

Defendant William Sterrett, being first duly sworn upon his oath, submits the following answers to the plaintiffs' interrogatories numbered 1 through 6:

1. I am unable to answer this question because the Indiana State Department of Public Welfare does not keep records showing the specific reason applications are denied and only the 92 county departments of public welfare would be able to determine this information.
2. I am unable to answer this question because the Indiana State Department of Public Welfare does not keep records showing the specific reason applications are denied and only the 92 county departments of public welfare would be able to determine this information.
3. "What is the number of appeals filed in 1970 by applicants who were denied ADC because they had not been separated from their respective spouses for at least six months?" There were four (4) appeals filed in 1970 upon the previously stated ground. "When was each such appeal filed?" These appeals were filed on the following dates: March 3, 1970, March 5, 1970, March 2, 1970, and April 3, 1970. Hearings were held upon two of the above appeals. The hearing dates were April 7, 1970, and May 14, 1970. Two of the appeals filed in 1970 did not result in a hearing because the person requesting the hearing failed to appear for said hearing upon the date the hearing was scheduled. "What was the result of every such appeal?" In two (2) of the appeals the County Department of Public Welfare was sustained and the assistance was denied. In the remaining two (2) appeals

the appeal was dismissed for failure upon the part of the appellate to appear at the hearing on the appeal.

4. I am unable to answer this question because the Indiana State Department of Public Welfare does not keep records showing the specific reason applications were denied and only the 92 county departments of public welfare would be able to determine this information.
5. I am unable to answer this question because the Indiana State Department of Public Welfare does not keep records showing the specific reason applications are denied and only the 92 county departments of public welfare would be able to determine this information.
6. There was one (1) appeal filed on November 21, 1969, upon the previously stated ground. This appeal was held on December 19, 1969, and a decision was released on April 9, 1970. This decision sustained the County Department of Public Welfare and denied assistance.

/s/ William R. Sterrett
WILLIAM R. STERRETT, *Administrator*
Indiana State Department of Public Welfare

[*Affidavit and certificate of services omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, ET AL.
v.
WAYNE STANTON, ET AL.
} NO. IP 70-C-124

MEMORANDUM OF CONFERENCE HELD SEPTEMBER 29, 1970
and
ORDER FIXING HEARING DATE

The above-captioned matter came before the Court for a conference, on the record, for the purpose of discussing the plaintiffs' demand for immediate injunctive relief and hearing on the merits. Messrs. David F. Shadel and John Manning appeared as counsel for the plaintiffs. Messrs. Robert W. Geddes and George M. Curry appeared as counsel on behalf of the defendants. Plaintiffs requested that their motion for a temporary restraining order be granted immediately. The cause of the delay in reaching this case for hearing on the petition for preliminary injunction and hearing on the merits was explained. It was announced that the Court would prefer to hear all the issues at one time, both in respect to the granting of the temporary restraining order and permanent injunctive relief should the plaintiffs be entitled thereto.

Subject to Judge Kerner's approval, a tentative date some time subsequent to November 14, 1970, was designated for hearing the pending motions, and for hearing on the merits should the case withstand the jurisdictional attack.

It was ordered that the plaintiffs complete all discovery by October 20, 1970; that the defendants complete all discovery by November 1, 1970; that plaintiffs shall file additional briefs no later than October 20, 1970, and that the defendants shall file responsive briefs no later than ten (10) days prior to the date of the hearing on the pending motions and/or on the merits.

Since the date of the conference, the date of November 23, 1970 has been selected for the hearing on the pending motions and on the merits, and

IT IS THEREFORE HEREBY ORDERED that this cause is assigned for hearing on said date, at 10:00 a.m., 202–203 Federal Building, Indianapolis, Indiana.

Dated this 22d day of October, 1970.

/s/ William E. Steckler
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, ET AL.
vs.
WAYNE STANTON, ET AL.
} CIVIL ACTION IP 70-C-124

MEMORANDUM OF CONFERENCE HELD ON OCTOBER 27, 1970 AND ORDER

The above-captioned matter came before the Court for hearing on defendants' motion for protective orders. Messrs. David F. Shadel and John Manning appeared as counsel for the plaintiffs. Messrs. Robert W. Geddes appeared as counsel on behalf of the defendant Wayne Stanton, George Curry for defendant William Sterrett.

Defendants requested that plaintiffs be denied the right to take 72 depositions on the grounds that such discovery was oppressive and unreasonable and was beyond the Court's deadline requiring plaintiffs to complete all discovery by October 20, 1970. The Court being duly advised of the defendants motion for protective order, the Court permits plaintiffs to continue discovery and to take depositions, and the Court orders plaintiffs' counsel to be reasonable and attempt to avoid cumlative witnesses by establishing classes, where appropriate, and thereby limiting the burden on opposing counsel.

IT IS THEREFORE ORDERED that the defendants' Motion for Protective Orders are denied.

IT IS FURTHER ORDERED that the prior order requiring plaintiffs to complete discovery by October 20, 1970 and that defendants complete discovery by November 1,

1970, be and is hereby rescinded as to allow further discovery.

DATED: December 2, 1970.

/s/ William E. Steckler
JUDGE, UNITED STATES DISTRICT COURT

APPROVED:

/s/ David F. Shadel
DAVID F. SHADEL,
Attorney for Plaintiffs

/s/ Robert W. Geddes
ROBERT W. GEDDES,
Attorney for Defendant Stanton

/s/ George M. Curry
GEORGE M. CURRY,
Attorney for Defendant Sterrett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

MOTION TO INTRODUCE DEPOSITIONS INTO EVIDENCE

Now come plaintiffs by counsel and say that the depositions of: (a)

Donna M. Anderson
Eva Carver Antrobus
Patricia Benson
Alma D. Black
Susan Bowman
Christine Buford
Anna Cooper
Martha Couch
Carlene Davenport
Toni Davis
Annie Fennell
Lucy Hall
Thelma Hunter
Alice Hall
Dora King
Ruth Massie
Elner McIntyre
Beverly A. Osbourn
Anna J. Patrick
Janet Salmon
Marthena Tanner
Sandra Watkins
Sharon Wright

and of (b) Nola M. Vaughn, Betty White, and Mr. Pramuk and of (c) Kay Aikens, Kay Lambe, and Linda Moskowitz have been taken. Because of the widespread and recurring nature of the alleged unlawful acts and practices committed by defendants and their agents, because of the numerous witnesses needed to testify as to these acts and practices and the impracticality of producing them all in open court, and because of the importance of the nature of this cause, it is desirable, in the interests of presenting to this court the evidence in concise and expedient a fashion as possible, to allow the depositions of all of the persons in categories (a), (b) and (c) into evidence in this matter. Furthermore, the persons in class (b) are all employees of various Indiana County Departments of Public Welfare and reside and work at a distance greater than one hundred (100) miles from the place of this trial. Also, the persons in class (c) all reside and work at a distance greater than one hundred (100) miles from the place of this trial.

WHEREFORE, plaintiffs respectfully move this court

to allow into evidence in this cause the depositions of all persons named above in categories (a), (b) and (c), all pursuant to Rule 32 of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ David F. Shadel
DAVID F. SHADEL
Attorney for Plaintiffs

[Certificate of services omitted in printing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, ET AL,

vs.

WAYNE STANTON, *Director, Marion County Public Welfare Department,* ET AL.

NO. IP 70-C-124

Appearances:

For Plaintiffs: DAVID F. SHADEL and JOHN MANNING

For Defendant STANTON, ET AL: ROBERT W. GEDDES

For Defendants STERRETT, ET AL: GEORGE M. CURRY

BE IT REMEMBERED that on the 23rd day of November, 1970, at approximately ten o'clock A.M., in the United States District Court for the Southern District of Indiana, Indianapolis Division, at the United States Courthouse in the City of Indianapolis, Indiana, the above-entitled cause came on for trial before the Honorable Otto Kerner, Seventh Circuit Court of Appeals, Chicago, Illinois; Honorable William E. Steckler, United States District Court, Southern District of Indiana, Indianapolis Division, and Honorable James E. Noland, United States District Court, Southern District of Indiana, Indianapolis Division, with the Honorable Otto Kerner presiding, and [2] that the proceedings were in words and figures as follows, to wit:

THE COURT: The Clerk may call the case.

DEPUTY CLERK: Laverne Carter, et al, versus Wayne Stanton, Director, Marion County Public Welfare Department, et al, Indianapolis 70-Criminal-124.

(Omitting opening statements of counsel, evidence was submitted as follows)

[3] CHARLES DIETER, a witness called by plaintiffs, having been first duly sworn testified as follows.

DIRECT EXAMINATION

Questions by MR. DAVID F. SHADEL

Q. Please state your name.
A. Charles Joseph Dieter.
Q. Are you employed?
A. Yes.
Q. How are you employed?
A. I am an attorney at the Legal Services Organization of Indianapolis, Incorporated.
Q. Do you have any specialty there?
A. From February '69 until September, my specialty was divorce and domestic relations matters.
Q. Approximately how many new cases per month or per week did you handle, what was your case load approximately?
A. I would say I averaged 20 to 30 new cases each month to 100, and I think it is now 140, I would say from February '69 until September '70 I might have received 400 or better new cases.
Q. These were all divorces and domestic relations?
A. Yes.
Q. Do you have any indication as to why some of these people came to you?
[4] A. Yes. Some of those people——

MR. GEDDES: Your Honor, the question would call for a yes or no answer.
THE COURT: I believe he answered that question.
MR. GEDDES: Yes, that's right.

Q. Have you ever had any contact with a woman by the name of Marthena Tanner?
A. Yes.
Q. Approximately when was that?
A. Approximately the middle of July, 1970.
Q. How did you come to have contact with her?
A. Marthena Tanner came to my office——

MR. GEDDES: Your Honor, we would object to any reason he might have with his contact with Mrs. Tanner as obviously we will be getting into hearsay evidence.

MR. SHADEL: Mrs. Tanner is available and will be a witness in this matter.

THE COURT: I will sustain the objection on the basis in which the question was asked, rephrase your question.

MR. CURRY: All I would like to say is, I would like to join in the objections of Mr. Geddes and especially reserve the right [5] to make additional objections on behalf of my client rather than have two of us make the same objection.

THE COURT: I gather from what you say you wish to join in the objection as made by Mr. Geddes, and if you have additional objections we can't assume them.

MR. CURRY: That's right, I want to reserve to make additional——

Q. Did you have any conversation with Mrs. Tanner?
A. Yes, sir.
Q. What did that conversation consist of?

MR. GEDDES: Your Honor, we would object to the question for two reasons, there has been no foundation laid for the conversation, just base it on what has been said so far as any conversation would be hearsay to defendants.

THE COURT: We will admit the answer at this time and you state Mrs. Tanner would be a witness?

MR. SHADEL: Right.

THE COURT: And we will make a ruling at that time when she testifies.

Q. What did the conversation you had with Mrs. Tanner [6] consist of?
A. Mrs. Tanner had two problems. She needed financial assistance and she also requested a divorce.
Q. Why did she request a divorce?

MR. CURRY: I would object to that question on the ground it is purely speculative in one person's mind.

MR. SHADEL: Strike the question and rephrase it.

Q. Did Mrs. Tanner tell you why she wanted a divorce?
A. Yes.
Q. What was the statement to you?
A. Mrs. Tanner wanted a divorce because her husband was an alcoholic and was not supporting his family. The other matter in which she needed assistance was in obtaining assistance from the, Marion County Department of

Public Welfare. The—She told me that she was told she couldn't file an application because she hadn't been separated from Mr. Tanner for six months, so I accompanied Mrs. Tanner over to the Welfare Department.

Q. Did you have a conversation with anyone at the Welfare Department at that time?

A. Yes, sir.

Q. With whom?

[7] A. A lady named—I'm sorry, first I spoke to the lady at the desk and, answers calls and so, and she referred me to a lady named Mrs. Steele in an office.

Q. This was where?

A. This was on the first floor of the City-County Building in the intake office of the Marion County Department of Public Welfare.

Q. Did you have a conversation with Mrs. Steele?

A. Yes.

Q. Wh is Mrs. Steele?

A. It appears to me she is in charge of the intake part of the Marion County Welfare Department.

Q. What did your conversation consist of with her?

Mr. Geddes: Your Honor, we would like to first determine when this conversation took place.

Q. When did this conversation take place, to the best of your knowledge?

A. To the best of my knowledge it was in mid July or the later part of July.

Q. 1970?

A. 1970.

Q. What did this conversation consist of?

Mr. Geddes: Your Honor, may I ask a preliminary question of the witness?

[8] Mr. Manning: I object to that, I think that is a proper matter for cross examination, I think an orderly manner would be first to ask our questions.

The Court: I think we should wait for cross examination.

Mr. Geddes: We will object to the testimony of a conversation between two parties since it will be hearsay as to the defendants.

Q. What did that conversation consist of, please?

A. I requested Mrs. Steele to permit Mrs. Tanner to fill

out an application for ADC and Mrs. Steele, she didn't, I must say Mrs. Steele did not say: "no, you cannot" Mrs. Steele said, "well, it would be pointless because she will be denied anyway because she hasn't been separated from her husband six months, it's a waste of time for persons to fill out applications when they are going to be denied anyway," and I stated "she, you know it's a legal right, let's fill it out and let it be denied," and at that point she said "yes, you're right" and Mrs. Steele gave me an application and I helped Mrs. Tanner fill it out and Mrs. Tanner filed it.

Q. Did you have a conversation with anyone else at the [9] Marion County Department of Public Welfare concerning this application with Mrs. Tanner?

A. No, sir. I know Mrs. Tanner—well in filling out the application I learned that Mrs Tanner had a child about 14 or 15 years old, some years along had been separated from her for years, when I filled out the application I made that very clear, she had been separated from the father of that first child for many years, for more than six months, even though the father of her other three children, I believe, had not at the time been separated from Mrs. Tanner.

Q. In the course of your practice as an attorney, as a divorce specialist with legal services organization, have you had any contact, whether written or verbal, with Marion County Department of Public Welfare concerning divorces or welfare applications?

A. When I first came to this job I was instructed by the man I replaced that in this situation where the six months problem arises to either telephone or just send one of my cards, or a note, or a letter and tell the Welfare Department that I had accepted the case and that I would file a divorce for the client. It was my understanding that they then would waive the six months requirement and go ahead and put the person on ADC.

[10] Q. Was there any change in this policy during your employment?

A. Based on my experience I would say at first when I would send a card or a letter and I finally started sending a form letter.

Q. Why did you begin sending a form letter?

A. Well, it was easier and we had had a number of these and the form letter would say I had accepted this person as a client.

Q. You say you have had a number of these, meaning what?

A. A number of persons who come say they could not apply until I took legal action for them and until I communicated to the Welfare Department that I was going to file a divorce or legal separation.

Q. Approximately what number of cases or instances has this happened since your employment with Legal Service Organization?

A. I would very conservatively estimate that 100 persons since between February of 1969 and September 1970 were in the situation where Welfare wanted me to communicate to them that I was going to file a divorce or a legal separation. It apparently, these people were referred to me by the Welfare.

MR. GROOMS: We will continue to object to all this hearsay evidence as to these [11] defendants.

MR. MANNING: Your Honor, we would respond to the hearsay objection, in fact, it's an admission against the interest in the premises of this case on the part of Marion County Department of Public Welfare, which is a party defendant in this matter. The hearsay rule does not exclude such testimony.

THE COURT: These are only estimates, I think we must sustain the objection so the last answer will be stricken.

Q. Before your conversation with Mrs. Steele on behalf of Mrs. Tanner, did you have any previous conversations or dealings with Mrs. Steele or anyone else in the intake department of Marion County Department of Public Welfare?

A. Yes, sir.

Q. Under what circumstances did you have this contact and with whom?

A. I have had several contacts with a lady named Mrs. Fringe during the earlier portion of the months I indicated, I was under the impression Mrs. Fringe was then in charge of the intake or at least had a report job in the intake.

Q. Did you have conversations with her?

[12] A. Well, I would call her and tell her that——

Q. Excuse me, could you answer that yes or no.

A. Yes.

Q. What did the conversations consist of?

A. I would tell her I was going to file a divorce.

MR. GEDDES: Before we get any testimony we would like a proper foundation laid for any conversations between this witness and any party.

THE COURT: Sustained.

Q. Approximately when did you have conversations with Mrs. Fringe?

A. Well, I can only say I had conversations with Mr. Fringe, numerous ones between October of 1969 and March or April, maybe of 1970.

Q. You had numerous and continuing conversations with Mrs. Fringe?

A. Yes, sir. Sometimes I just took my card and wrote on the back of my card that I was going to file a divorce for that person, then I wouldn't call, I would tell her to take my card back, that would prove to the Welfare Department I was filing a divorce.

Q. In your experience as an attorney has the Burns regulation 52-100-2D, which requires a six months [13] separation of spouse in order for children to receive aid to dependent children, in your experience how has that been enforced against your clients?

MR. GEDDES: We would object to that question since he is calling for an opinion of this witness, and ask this court to decide how that regulation has been en—applied or enforced.

THE COURT: I think, I don't think he is asking for an opinion, I think he is asking for a factual statement as how it applied with the clients he represented and he can answer within that definition.

A. My clients had been separated.

THE COURT: Would you identify the individuals, I think that is precisely what the attorney is asking.

Q. Can you identify all the individuals by name?

A. I can't identify—I'm not prepared to identify all the individuals by name at this moment, no.

Q. Please answer the question without identifying them as to their individual names.

MR. GEDDES: We would object unless he can identify these people.

THE COURT: I will sustain the objection. [14] He must

dentify the individuals, and what occured in each individual nstance, otherwise we are speaking about completely unidentifiable unknown individuals.

MR. SHADEL: I'm sorry the identity of these people re——

Q. I'm sorry, are these——

THE COURT: I understand your question of the witness to e what is his experience was with clients he represented n relation to obtaining a divorce and getting ADC from he Welfare Department, that is what I understood your uestion to be.

MR. SHADEL: Right, and there was a ruling he would have o identify the persons. My question is who are the persons o identify as Welfare workers or his clients.

THE COURT: His clients, number one, and if possible the elfare individuals with whom he dealt in the experience.

Q. Have you had a client by the name of Mrs. Couch?

A. Yes, sir.

Q. Have you had any contact with Marion County Department of Public Welfare on her behalf?

A. I don't believe I had any conversations, I believe [15] communicated to them by letter or card someway that I as going to file a divorce for her. I believe I can recall a dy named Anna May Tunstill was a lady who I filed a legal paration for in order to get around the six months ruling. lady named Doris Anderson, I filed a legal separation r her in order to get around the six months rule during is, I believe the summer of '69.

Q. Referring specifically to Doris Anderson you said, id you have any conversation with anyone at the Marion ounty Department of Public Welfare concerning her case?

A. I had conversations later because, but it was not in gard to the six months matter, it was because she was cused of having her husband slip back in her house, but at had nothing to do.

Q. Earlier you spoke of form letters you sent out, what re these form letters?

A. It's just one form letter that says——

MR. GEDDES: Your Honor, we would object to what the tter says unless it is identified and put in evidence as, beuse the document itself will speak for itself.

MR. MANNING: Your Honor, we made a motion earlier in this case to produce the [16] files of the defendants relating to this matter so we might, particularly what cases were involved in the class and the defendants have refused to divulge this information, so they can't do it. I think this bears on the testimony and admissibility.

THE COURT: My recollection is they raised an objection to produce all the files and certainly what they claim are secret and confidential. Do you have these letters in your files to which reference has been made?

MR. GEDDES: Your Honor, I don't know what letters they are talking about.

THE COURT: You're representing Mr. Stanton?

MR. GEDDES: Yes, that's correct.

THE COURT: These are letters Mr. Dieter says they sent to the Marion County Welfare Department indicating he would file separate maintenance or divorce actions for certain of the identifiable individuals.

MR. GEDDES: If it is a form letter, I will confer with Mr. Stanton as to whether they are receiving this letter, if not there will be no problem at all.

THE COURT: Very well. We will give you [17] an opportunity to find such letter and produce it, if not we will hold the matter open for production, on the part of plaintiffs.

Q. What is the gist or what does this letter convey?

THE COURT: I have sustained the objection as the letter being the best evidence.

Q. In the course of your business why do you tend to have contact with the Marion County Department of Public Welfare?

A. Merely to indicate to them that I have interviewed a person and have agreed to file a divorce or a legal separation for the person and that I will do so as soon as possible. I am hopeful when I do this they will waive the six months separation requirement.

Q. Is this at the request of anyone, for example, the client?

A. Well, of course. Of course the client, as I say, the clients are referred in, I would say, every case, the client has been referred to me by the Marion County Welfare De-

partment, they told the person what they need to do, said to either go to legal aid or legal services.

Q. Have you had any other clients whom you can remember that name who have been told they must file for legal separation or a divorce before they are entitled [18] to apply for Welfare or before they are entitled to receive ADC benefits.

Mr. Geddes: Your Honor, we would object to that question since it is leading and suggestive.

The Court: He may answer that yes or no.

A. Yes.

Q. Do you remember any of the particular names?

A. Alma Black.

Q. Was that true with any of the other clients whom you named a short time ago including I believe, Doris Anderson?

A. Yes, sir, that was true of all of those persons I named. I have been trying to recall the names of persons who had this problem. I'm sorry that I can't.

The Court: I would like to inject a question. Is your testimony such as to imply to the court that each person were in the process of being helped by the Marion County Welfare Department through referring them to you for the purpose of commencing divorce proceedings?

The Witness: Yes, sir. I would say that is true, they were being helped in the sense it is helpful to refer them to an attorney for the purpose of commencing divorce proceedings. [19] It is also true they told us they could not apply for ADC until they proved they came to me and give some proof that I was going to do this.

Mr. Shadel: I have no further questions.

Cross examination

Questions by Mr. Robert Geddes

Q. Mr. Dieter, you say you are an attorney here in Indianapolis?

A. Yes, sir.

Q. How long have you been with Legal Service Organization?

A. Since February '69.

Q. I gather then from your experience you are familiar

with the rights an individual has to appeal, have you not, if they are denied Welfare assistance?

A. I believe so.

Q. Are you familiar with the booklet that is put out by Legal Services Organization, titled, What You Should Know About Welfare Aid To Dependent Children?

A. Sorry to say that I have never even, except for seeing the cover, I have never even gone over that book.

Q. Is that booklet kept and retained in your office?

A. Yes.

Q. Would you tell me what the rights of appeal are?

[20] A. Well, I think a person denied welfare has a right to appeal and have a hearing before a member of the State Welfare Board, where they act as a hearing officer and can make a ruling on whether the person is entitled to assistance. I know one of our attorneys regularly goes to the hearings and represents persons denied ADC. I have never been to one myself.

Q. Are you also familiar with the law if they are refused an application they have a right to appeal, are you not?

A. Well, I imagine that is the law.

Q. Now, these people you are referring to, I believe Mrs. Couch?

A. Yes, sir.

Q. Was she denied assistance?

A. Well, I imagine not, since I filed the divorce for her, I imagine she got on.

Q. She did not have any six months then involved?

A. No, what I mean is, when we file a divorce for the persons they usually waive the six months rule and let them on ADC.

Q. Are you trying to say, Mr. Dieter, the only way, the only time they waive this six months rule is when a person files for divorce?

A. Well, of course I do believe the welfare regulations [21] provide that in a case of severe hardship that a special finding of eligibility should be made for, and waive the six months rule. The rules to permit this, yes.

Q. You are also familiar, are you not, Mr. Dieter, of situations where there has been no filing for divorce or no filing for legal separation and yet a person has received aid for their dependent children and yet the separation has been less than six months?

A. I can't say that I know of a case like that, although I have asked, I have sometimes sent the welfare a letter and said something, for instance, a lady wanted a publication for legal separation which I felt was foolish and I sent a letter and said, "well this is silly, why not just waive the six months because of severe hardship." They may have for her, I don't know.

Q. Was Mrs. Hunt still, did she appeal her case?

A. No, I filed a legal separation for her.

Q. She did receive benefits?

A. Yes, sir.

Q. How about Mrs. Anderson?

A. Yes, sir.

Q. How about Mrs. Black?

A. Yes, sir, everyone of these persons received benefits.

[22] Q. I take it then from your testimony that you did not represent any individuals who received benefits that who did not file for divorce?

A. I honestly don't believe I have ever represented a person who had the six months waived for them without a divorce or legal separation, to the best of my knowledge.

Q. Are you familiar with any cases where the six months period was waived and there was no divorce filed and no separation filed?

A. I'm really not, I don't deny they may exist, I'm not familiar with them.

THE COURT: Mr. Dieter, as I understand your testimony, you never represented any client or claimant in the filing of an application for aid under AFDC, initially, initial filing?

THE WITNESS: Your Honor, if you mean represented I made a few out, I assisted in making a few applications out, generally, I did not generally, I gave the client a little card, note or letter and said go back to the Welfare Department with this and I believe they will permit you to apply.

THE COURT: In the individual cases, I hope you can identify them, if you can, did [23] these individuals come to see you after they had visited the Marion County Welfare Department or before?

THE WITNESS: Afterwards, Your Honor.

Q. And your previous testimony you did identify certain individuals by name in each of those cases had they pre-

liminarily been, preliminarily visited the Welfare Department?

A. Sir, as I recall, yes, sir, Tanner, Anderson, Couch, those three at least had visited the Welfare first and then come to me.

THE COURT: Any further questions?

MR. GEDDES: No further questions, Your Honor.

THE COURT: Mr. Curry do you wish to ask any questions?

CROSS EXAMINATION

Questions by MR. GEORGE CURRY

Q. Just a few questions. If I understood your testimony correctly you stated that you were aware of the fact there was an appeal process?

A. Yes, sir.

Q. You were aware of the fact that both an alleged refusal to take an application and both denial of benefits could be appealed?

[24] A. Yes, sir.

Q. Yet none of the cases where you identified specific persons did you take an appeal with them?

A. That's correct.

Q. Do you know what the time is on this appeal?

A. Not really.

Q. Then you do not know whether or not that appeal would be a quick method if there were, in fact, need whereby they could be put on welfare right away, which would resolve this problem do you?

A. I don't know how quickly the appeal procedure would take.

MR. CURRY: No further questions.

MR. MANNING: We have nothing further.

THE COURT: You may be excused.

(Witness excused)

ERNEST MCGRUDER, a witness called by defendant, Marion County Welfare Department, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. ROBERT GEDDES

MR. GEDDES: Your Honor, at this time we would like to

put Ernest McGruder on the stand for the defendants, with the agreement [25] of the other side.

Q. Would you state your full name, please?

A. Ernest Eugene McGruder.

Q. What is your age?

A. 33.

Q. Where do you live?

A. 1761 Horizon Lane, County of Marion, State of Indiana.

Q. How long have you lived in Indiana?

A. All my life.

Q. Are you a family man?

A. Yes.

Q. What is your educational background, Mr. McGruder?

A. I have a Master's Degree in social work.

Q. From where?

A. Indiana University.

Q. When did you graduate from Indiana University?

A. 1965.

Q. What is your present occupation, Mr. McGruder?

A. Social Worker, Chief Supervisor Family Services Division.

Q. For whom do you work?

A. Marion County Welfare Department.

Q. How long have you worked for the Marion County Welfare Department?

A. I started almost 11 years ago, but I have been away to the army and to graduate school.

[26] Q. As supervisor of that section will you tell the court briefly what your duties involve?

A. I supervise the implementation of all the laws, rules and regulations governing welfare in Indiana.

Q. How many employees do you have working for you?

A. About 160.

Q. Mr. McGruder, is it the welfare intake department under your jurisdiction?

A. Yes.

Q. Would you explain to the court what I mean by the welfare intake department?

A. That is a section of the Family Services Division who are charged with the responsibility of determining need and eligibility for ADC, old age and the other categorical programs.

Q. For clarification for the court, would you explain to the court the procedure involved for an individual who desires to make an application for benefits for dependent children?

A. A person comes into the intake department of the Welfare Department and they explain to a receptionist what the problem is or they try to indicate what it is they want. The receptionist will call a case worker from that department to come and talk with this person and try to assess what it is they want [27] and the best possible means of alleviating whatever this might be.

Q. Are these individuals that the applicant talks to, are they case workers?

A. Yes.

Q. How many case workers are there approximately in the intake department?

A. 12.

Q. Now, what is the policy and practice of the Marion County Welfare Department with respect to the filing of an application?

A. Any person who states that they want to can apply for welfare.

Q. If a person applies for welfare benefits, let's say for assistance for their dependent children, what is the step by step procedure as far as after they are assigned to a case worker in the intake department?

A. After they are assigned to a case worker, the case worker will talk to them and make some kind of assessment, what it is, what the problem is and they will tell them what the best possible solution to this problem is and help them with it. If it is that public welfare is the answer to the problem they will be encouraged to make application and a study will be made out of their need and eligibility and [28] they will be granted assistance if they are needy and eligible.

Q. How is this study of need determined?

A. There is a set standard for requirement for the State of Indiana, it is used State wide as to what a family of a certain size needs monetarially to maintain a standard of living compatible with decency and health, the standard is applied objectively to everyone who applies for welfare.

Q. What factors are taken into consideration in this determination of need?

A. Food needs, clothing needs, personal needs like tooth-

paste, household supplies and replacements, shelter needs, there are needs such as insurance, school expenses, anything that a family would need to maintain a standard of living compatible to decency and health.

Q. What is the procedure in practice for the Marion County Welfare Department with respect to the situation where there is continued absence of one of the parents?

A. Anyone may make an application for assistance. The people are instructed in the intake and, to my knowledge and practice, anyone who asks to can apply for welfare whether or not it is believed by the case worker that [29] the person will eventually wind up eligible. To my knowledge this is done.

Q. Is there any practice or procedure, that you know of, with respect to State or Marion County Welfare Department, which would require a person that is talking about a situation where one of the parties is separated which would require the applicant to file for divorce?

A. There is no policy in the intake department of Marion County Welfare where one must file for divorce. That would have no bearing on whether or not they can file an application for assistance.

Q. How about filing for a legal separation?

A. That neither.

Q. Is that taking into consideration at all?

A. Not whether or not one has filed, no.

Q. Is it taken into consideration—strike that. With respect to whether or not there is an actual or bona fide separation.

A. Now, this would tend to give credibility to the fact this is not a run of the departure of the man or separation of the couple is not a tentative one which may be, maybe last for a day or so, this would indicate to us, if there is intent on the part of the party who applies for assistance that they will [30] not go back to their husbands, this is not just a npetuous parting of the couple.

Q. Mr. McGruder, to your knowledge has there been any assistance granted by Marion County Welfare Department for aid to dependent children where there has been a separation of the parties less than six months there has been no divorce filed, there has been no legal separation filed?

A. Yes.

MR. MANNING: We object to the question and the answer, there is no specificity, it is a general question and the defendants made some sort of an objection to a question we asked.

THE COURT: The objection is overruled. You may ask in your cross examination.

Q. Mr. McGruder, with respect to a separation of the parties or I should say in absence of one of the parents, not a continued absence, I'm talking about, say, death of a parent or absence of a parent where it is more than six months, what are your standards of need with respect to an obligation filed in that type of situation?

A. The same standard need would apply, that applies to all applicants for welfare.

Q. In other words, your standard of need for those of less [31] than six months separation would be the same as it is for more than six months?

A. Yes.

Q. Mr. McGruder, for clarification for the court, and the practice of the Marion County Welfare Department. If an application is filed for assistance for dependent children, for aid to dependent children, and there is a separation of less than six months what is the step by step procedure with respect to whether that application is granted or denied?

A. If a case worker in her study, in their study of the case situation finds that there is indeed reason to believe the separation is actual and bona fide and the need as indicated is, the person is indeed of need of assistance they may ask that the six month separation be waived after it has been established the separation is bona fide.

Q. Now, who makes the final determination?

A. Well, most of the time I do, sometimes I discuss it with the director and in my absence my assistant will make this determination.

Q. What—how long a period are we talking about, from the time a person makes his application until it is granted?

A. It can be a matter of minutes, at most a matter of [32] a day.

Q. We are not talking about a long period of time then?

A. No.

Q. What is the procedure then followed if the application is denied?

A. If the application is denied?

Q. Yes.

A. It is sent to the central files.

Q. Is there any notification to the applicant?

A. A notification goes to all applicants of assistance what the determination of the board has been and at the same time they are notified that if they don't agree or don't like the finding of the board they may appeal this to the State Department of Public Welfare and they are told how to appeal.

Q. Are you familiar with the mechanics involved in an appeal to the State Department of Public Welfare?

A. I believe I am. I believe all that is necessary is a telephone call or a letter to the State Department of Public Welfare and the address of the State Department of Public Welfare is on the notice that we send all applicants, I believe they notify the State Department of Public Welfare of their disagreement or chagrin with the decision of the Marion County Department and at that time I think an appeal is set [33] up by the State Department of Public Welfare and they do have a hearing.

Q. Where are those hearings held in the first step of that appeal?

A. The first step hearings are held in the City County Building, the 15th floor.

Q. Is that on the same floor which you work?

A. No, I work on 14.

Q. Are you familiar with the appeals from the State Department of Welfare to the Welfare Board or State Welfare Board?

A. I know there is a provision for this and I know all applicants or all appellants who disagree with the findings of the State Welfare Department are notified that they may appeal this decision to the State Board. I get a copy of the letter that they get informing them of same.

Q. Do you have any statistics, Mr. McGruder, for the Court as to those individuals who have applied for Welfare assistance where there is less than six months separation and those cases where it has been granted?

A. No, we don't keep statistics on this. It has happened with regularity and up to now we have found no reason to keep this extra set of statistics. I do know we [34] have made a study just recently, just random cases and I think in

about a six month period I think there had been about 30, 33, 34 waivers requesting granted for people that had not been separated for six months.

MR. GEDDES: No further questions.

THE COURT: By the way counsel, I note you have been engaged as plaintiffs counsel.

MR. MANNING: My name is John Manning.

THE COURT: You may proceed.

CROSS EXAMINATION

Questions by MR. MANNING

Q. Mr. McGruder, how do you supervise your department?

A. I don't quite understand the question.

Q. You are supervisor, how do you supervise, what are the details of the supervision?

A. Well, every week I have a meeting with my supervisory staff which consists of about 25 supervisors under which are about 5 case workers and we meet at least once a week to discuss and pass on information relative to changes, new things that go on. I also have an orientation program for all workers relative to rules and regulations about public welfare and implementation thereof. We also have in-service training for all the staff relative to [35] practice and procedures.

Q. Does the orientation include the Federal Law regulations?

A. Yes.

Q. Do you yourself ever monitor contacts made in the intake section of your department?

A. You mean do I sit in on any of these?

Q. Yes.

A. No.

Q. When was the last time you did that, or have you ever done that?

A. I have done some myself but as far as sitting in on interviews with a case worker, I haven't done that in a long time. I say I don't do this as a matter of practice.

Q. Do you issue any internal regulations that are not available to the public?

A. No.

Q. Nothing in writing?

A. Nothing that is not available to the public.

THE COURT: Nothing what?

THE WITNESS: To the public.

Q. At the conference do you, you have every week, do you discuss internal regulations that are not published, regulations, understanding, conventions, usages, the like that are not known to the public, do you discuss anything like [36] that?

A. I don't discuss anything that is not read and available to the public, I don't recall having discussed anything that was not available.

Q. Where would one find this rule you have that the filing of a divorce, lends credence to the claim of bona fide separation?

A. To my knowledge that is nonexistent, I don't think you can find it.

Q. But there is such a rule or understanding, isn't there?

A. No, no.

Q. There isn't?

A. No.

Q. You testified that the last six months, was it, I did not get the period exactly, but in the period of six months 33 or 34 waivers of the six months waiting period were granted, that was out of how many that might have been granted?

A. Really don't know.

Q. You have any idea?

A. No, I don't.

Q. Do you have the names of any of those people?

A. They are available here in the courtroom.

Q. They are?

A. Yes.

[37] Q. Could you tell us what those names are, please?

A. I think Mr. Geddes has them.

THE COURT: Just so we are talking about the same thing, we all understand what is meant by the language received waivers. The last six months, 33 to 34 people received waivers, what are we speaking of as a waiver?

MR. MANNING: Waiver of the six months waiting period that is established by the regulations under attack in this matter.

THE COURT: Is this what the witness is referring to?

THE WITNESS: Yes.

Q. Could you read those names please?

A. Ruth Mariority; Joyce Burchel; Bobby Hargrove; Margaret Sawyer, Frances Robinson; Hattie Edwards; Edna Perry; Charlotte Martin; Judith Scruggs; Mary Townsend; Janet McFiel; Hattie Ramtree; you want me to keep reading?

Q. Yes, please.

A. Erline Williams.

Q. Is the list not legible?

A. I'm having a problem reading this, yes.

Q. Why are you having a problem reading it?

A. My vision isn't very good.

Q. Well, perhaps you don't need to read the rest to them. [38] Hattie Edwards was pregnant when she applied, wasn't she, you mentioned Hattie Edwards?

A. I don't have the details.

Q. Didn't you make the determination?

A. Yes, but I make so many of them I don't remember the individual cases.

Q. You make them on somebody else's recommendation?

A. On the case worker's recommendation.

Q. Mrs. Edwards was pregnant when she applied would that be the reason she was granted an exception?

A. I don't have the vaguest idea.

Q. Where can one find the criteria that are used by you or your associates in granting exceptions to this six month waiting period?

A. The criteria is one—each case is considered on its own merit and without consideration of both the man, his behavior and the woman and her behavior we would have, we make a decision on each individual case.

Q. You don't have any guidelines then, is that right?

A. They say exceptional circumstances, I don't know.

Q. You don't know what that means though, do you?

A. I don't have any hard and fast rule that is applicable.

Q. What are the names of the intake workers?

A. Well, I have one chief supervisor by the name of Frances Steele. I have two first line supervisors by [39] the name of Shelby Hoff and Rebecca Webb, under each of

these are six case workers and I don't recall each of their names.

Q. You do then keep a record of those who are granted exceptions to the six month rules, is that right?

A. No.

Q. How did you happen to——

A. I called my workers and asked them if they remembered cases whereby the six month requirement had been waived.

Q. That was with a list 33 or 34?

A. I didn't count them, I don't remember.

Q. That's about 6 a month, isn't it?

A. 35.

Q. That is about 6 a month?

A. Almost, yes.

Q. As I understand it, in order to gain an exception to the six months waiting period you have to show something beyond need, isn't that right, just simple need, would that be correct?

A. No more so than anybody else has to show to be eligible for welfare.

Q. If we were to show that there are persons who come into the intake section of your department and who are not allowed to apply, even though they asked to [40] apply, what would you say about that, would that be in conformative with your supervision?

A. No.

Q. That would be outside of your line of duty?

A. Yes.

Q. And the person who did that would they be liable to discipline or discharge?

A. Well, it would have to determine, we would have to determine the facts of the matter, as far as discharge, that is not within my power to do.

Q. You are the supervisor but you can't discharge your underlyings?

A. No.

Q. Who has that power?

A. That is a matter that director and state personnel.

Q. You could make recommendation?

A. Yes.

Q. Has the application procedure changed at all since you have been with the department 11 years?

A. Yes.

Q. How has it changed?

A. Well, let's see, when I first came they had an intake section. When I came back from the army they, we had moved the building, I mean we had moved, they had an intake section and once it was done away with [41] and the regular area workers took care of the intake and then with some new regulations we started up in intake again.

Q. How about the procedure itself getting right down to the contact between the caller?

A. In the last 11 years it has changed considerably. Many times.

Q. Has there been any general trend as to how this has been changing, is there any pattern how it has changed?

A. No.

Q. You mentioned the letter sent out with the denial because of the six months rule, does the state department provide legal assistance to people who want to appeal?

A. I don't know.

Q. Is there a notice on the letter that assistance could be provided?

A. I think there is, I can't recall. I know we send a letter out besides that one and tell people they can hire counsel and they evidently do.

Q. You are familiar with the rules and regulations since you administer for the county department, they are quite voluminous, aren't they?

A. Yes.

[42] Q. And reasonably complicated for a layman?

A. Yes.

Q. So that it would be difficult, wouldn't it, for a caller to appeal a decision?

A. That is conjecture.

Q. If he did not have an attorney?

A. I don't think so, most don't.

Q. Don't you have regular meetings in your department to discuss interpretations of the rules?

A. Yes.

Q. Does the State Department on this letter announcing the denial because of the six months rule notify the potential appellant, shall we say, that free legal assistance is available at either Legal Services Organization, which has three

or four officers, or Legal Aid Society in the English Foundation Building?

MR. CURRY: I would object to the question on the ground it shows no connection with this witness in what the State Department does or does not do.

THE COURT: Sustain the objection.

MR. MANNING: I will withdraw the question. I have no other questions of this witness.

[43] MR. GEDDES: Just a few, Your Honor.

RE-DIRECT EXAMINATION

Questions by MR. ROBERT GEDDES:

Q. Mr. McGruder, am I correct, those 35 names you have of cases were the persons where adults were separated and there was no six months waiting period, am I correct in saying that is just a sample of some of the cases in your department.

A. I think these were gathered in one day's time. I asked workers, and all the workers aren't in every day, so this is just a very small portion probably with those who actually did.

Q. That would not include all the possible cases where that six month period was waived, would it?

A. Absolutely not.

Q. Do I understand, Mr. McGruder, from your testimony a case worker has a number of guide lines or sources which they use in determining a person's need?

A. Yes.

Q. What are some of those factors?

A. Well, the DPW form 350 is a table which establishes how much a family of a certain size needs, they do have a breakdown in telling how much they need for what, like for food, how much they would need per month's time for food, how much they would need per month's [44] time for clothing and others, fuel, utilities and so forth.

Q. What factors do they take into consideration in determining a person's needs?

A. Just that table, how many people are in the household, the ages of the children.

Q. Do they consider income?

A. Yes, and income.

Q. And other factors?

A. Yes.

Q. Are these determinations or factors the same for parties separated six months or less than six months or more than six months?

A. The same table is used for everybody.

MR. MANNING: I have just one question.

MR. GEDDES: We have no further questions.

THE COURT: I wish you would indicate when you are finished, I sometimes think you may be going back to your table to confer.

MR. GEDDES: I was, Your Honor.

THE COURT: I gathered that. If you will just inform us, we will be able to move a little faster.

CROSS EXAMINATION

Questions by MR. GEORGE CURRY

[45] Q. You testified you were employed by the Marion County Department of Public Welfare, is that correct?

A. Yes.

Q. You are not employed by the Indiana State Department?

A. No.

Q. You testified there was no different standard or need for a person who has been separated less than six months than any other welfare applicant?

A. No.

Q. In other words, the standard is the same?

A. Same.

Q. One other thing I would like to clear up for the record. Do you make the determination of eligibility or non-eligibility?

A. Myself?

Q. Yes.

A. No.

Q. Who makes that?

A. The Marion County Board of Public Welfare.

Q. Is this covered by statute?

A. Yes.

Q. And it is by statute they make this determination?

A. Yes.

Q. There is one other thing I would like to clarify. When you, and this is normal, when a person takes an [46] appeal

to the Indiana State Department of Public Welfare, do you receive notification of that appeal in all cases or just some cases?

A. No, I receive notice on all of them.

Q. And a hearing is set, is this correct?

A. Yes.

Q. Have you attended any of these appeals?

A. Yes.

Q. Is a person taking that appeal normally advised of the right to have counsel if they so desire?

A. As far as I know. I think this, they must be because many do, and I don't know how they are informed of it, what the State Department does.

Q. There is no problem here, if a person wants counsel they can have counsel, is that correct?

A. There is no problem.

Q. Can you tell me what the nature of that appeal is, since you have seen this, it appears you have?

A. I have seen them run the gamut. They are dissatisfied with the amount of the award, whether or not they got an award. I saw one the other day, they don't like my case worker. Just a myriad of reasons, almost any reason. Very rarely is one not taken. I mean, they don't have to have a substantial reason for wanting an appeal.

[47] Q. How many of these appeals have you sat in—have the first year's complaints seemingly been hampered by lack of an attorney?

A. No, I don't believe so.

Q. Are they generally able to state whatever they wish to state their case, so to speak?

A. It's generally an informal setting and I think people are put at ease, those appellants are put at ease and they feel free to speak their peace, it appears that way.

MR. CURRY: No further questions.

RE-CROSS EXAMINATION

Questions by MR. MANNING

THE COURT: I would like to ask a question. At what stage are they informed of the right to have an attorney represent them in connection with an appeal?

THE WITNESS: Now, it's policy to inform people at the intake interview of their right of appeal. Now, as far as

having an attorney I think that is covered in that intake interview. Now, I think it's, while it's understood by us and as far as giving a direct piece of information that you may have an attorney, I'm sure they are told they can have anybody represent them [48] at the time they are given a notice of what happened to the application.

Q. Mr. McGruder, relative to the hearings, I have been in some hearings with you and I do know you regularly attend the hearings, what is your purpose of the hearing?

A. To give redress to any applicant or recipient.

Q. Are you the hearing officer?

A. No.

Q. Do you give testimony at the hearing?

A. Sometimes.

Q. Is there ever occasion when you don't give testimony?

A. Yes.

Q. What is your purpose when you don't give testimony?

A. Well, it is that I am doing something else, when I don't give testimony I'm doing something else.

Q. I personally have been in appearance when you did not testify, I wondered myself why you were there, if you were not testifying, since you are not the hearing officer.

A. I am missing your line of questioning. What is the question?

Q. I am wondering why you are there, what is your purpose in being at the hearings if you are not testifying, and you are not the hearing officer?

[49] A. I haven't been at a hearing where I didn't give any kind of testimony, I don't believe.

Q. Don't you act as a quasi legal advisor in some respects at those hearings?

A. No, I don't practice law.

Q. Don't you state what the regulations are in some cases?

A. Oh, in some cases I probably have.

Q. Don't you make objections to the questions that are offered by the appellant?

A. I have done that too.

Q. Do you get copies of the results of the hearings you attend, do you know what happens to those?

A. Yes.

Q. In all your experience have you ever seen a successful

attack based on the United States Constitution, the Indiana Constitution or Indiana Statute in such a hearing?

A. What they are based on, I don't think they stipulate what they are based on, they just tell what the decision has been.

Q. Some of them do have some sort of a statement?

A. I don't remember reading where any quotes have been made, you know, relative to the constitution.

Q. What, in your experience, what would the disposition [50] of an attack, let us say, on the six month rule on constitutional grounds be, what would the hearing assembly do, would it hear such?

A. Any answer I would give would be conjecture.

Q. That's all right.

MR. GEDDES: We object. I would say this witness doesn't know all the constitutional provisions.

THE COURT: Sustained.

MR. MANNING: I have nothing further of this witness.

MR. GEDDES: No further questions.

THE COURT: Mr. McGruder, I would like to take you back to when an individual comes into your office and they are under the supposition they are eligible for some aid, are all individuals allowed to file an application?

THE WITNESS: To my knowledge. I have never known any that were not, yes, they are all given the opportunity to apply.

THE COURT: After the application is filled out how is it processed in your office?

THE WITNESS: Well, after the application is processed and——

THE COURT: I said, how is it processed. [51] The application is filled out, then what occurs step by step for granting or denying assistance?

THE WITNESS: The application goes to a clerk who determines by our table, that we just discussed, whether or not they are financially eligible and in a case determines whether or not they meet all the technical eligibility for requirements.

THE COURT: How is that issue made, I know you stated before in your testimony that there are certain tables you have, the amount needed for rent, for food, for clothing and a minimal living standard?

THE WITNESS: Yes.

THE COURT: How is that determined in relationship to that table?

THE WITNESS: A certain size family is just placed or——

THE COURT: For the moment let us speak of, say, a mother and three children ages 10, 8, and 7.

THE WITNESS: This table is called W form 350.

THE COURT: I don't care about the form and number, I want to know how it is used.

[52] THE WITNESS: It tells us what a mother with children 8 to 7 and 8 and 10 need. We have a basic needs chart and they tell us a family of this size with these age children need so much a month for basic needs. We can ascertain how much the rent is, we add to this what the basic——

THE COURT: I understand, what is there on the application form that would have some relationship to this standard?

THE WITNESS: The application form is 16 pages long and it does give all the information we need to determine whether or not, where somebody fits on this table of needs.

THE COURT: Obviously we are talking in dollars and cents?

THE WITNESS: Yes.

THE COURT: What questions are there on the application form that would be the comparable criteria?

THE WITNESS: Well, one is the age of the children and then it says composition of the household. There is a page on there that tells us the composition of the household. The ages of the children, the composition of the [53] household and what resources the family has.

THE COURT: What do you mean by resources?

THE WITNESS: Whether it be social security support, employment earnings, veterans benefits, any kind of pension.

THE COURT: And you add those all together?

THE WITNESS: Yes, and get a basic, an income. There are some complications about disregarding income, but basically from the application form we can get enough information to apply to the table to say what the needs of this family are and we can find what the income of this family is and we subtract what this known income from these needs, as prescribed by this table of needs, and then we arrive at the amount of the welfare grant.

THE COURT: Let us presume for the moment you have gone through this process and you have found that the

needs of this family in relationship to their available resources needs $100.00, through what process do you go in your office to get approval for that grant of $100.00 a month?

THE WITNESS: The case worker would recommend on a standard form to her supervisor [54] that an award of $100.00 a month be made to this family. The supervisor would review it, they would send it up to my section where another review is taken place and then it would be sent on to the Board of Public Welfare or to the Director first and then to the Board of Public Welfare.

THE COURT: When you speak of Board you are speaking of County Board?

THE WITNESS: County Board, yes, and the County Board generally follows the recommendation of the Director that the person would be awarded $100.00 a month.

THE COURT: You said generally, could you cite any examples where there were exceptions?

THE WITNESS: To my knowledge there have not been any exceptions.

THE COURT: Then you don't mean generally, you mean all.

THE WITNESS: To my knowledge, yes.

THE COURT: That's all we can ask about. To your knowledge, none have been refused that have been recommended?

THE WITNESS: No, to my knowledge.

THE COURT: I know this question has been [55] asked of you before, but I would like for you to clarify. Have you ever refused approval to an ADC application where the father has been absent from the home for a period of less than six months?

THE WITNESS: No.

THE COURT: You have granted them on all occasions where the needs and eligibility have been found, where there is need, and they have been found eligible and the father has been gone from the home for less than six months, they have not been turned down?

THE WITNESS: The application has not been turned down, but assistance has not always been granted.

THE COURT: I understand that. The assistance may not be granted, I would presume, because they have sufficient resources to sustain themselves at the minimal level?

THE WITNESS: Yes.

THE COURT: For no other reason?

THE WITNESS: No, there are cases whereby if it has not been or cannot be established that the separation is bona fide assistance has been denied.

[56] THE COURT: How do you determine whether it is separation or abandonment?

THE WITNESS: In essence where we know of, people come in the day after they have had a quarrel and they might go back two days later. Now, this is a regular pattern, as far as we can ascertain we would not grant assistance in that case.

THE COURT: How long does a father have to be out of the home before you would think they were eligible?

THE WITNESS: There is no stipulated amount of time.

THE COURT: From what you have just said you must have some criteria, suppose he is gone from home two days.

THE WITNESS: Sometimes—I can think of cases of molestation of father of children. The next day we would consider that.

THE COURT: And grant?

THE WITNESS: Yes, and grant assistance.

THE COURT: What other criteria do you have for example you can cite?

THE WITNESS: I can think of cases where a man is alcoholic, he beats his wife or beats [57] his spouse or he is cruel to the children or it is indicated he is, or where sometimes this is the first time there is an argument between the husband and wife where they just perennially go away; have fights and separate and come back and a lot of it would depend on how she expresses the relationship between them improbable.

THE COURT: Suppose you have such a case, the father is an alcoholic, he beats on his wife, abusive to the children, he is gone for one week and the mother has no money to provide food and perhaps on a day like this fuel, what assistance could you give her under those circumstances?

THE WITNESS: We would recommend she go to the Township Trustee's office for assistance, emergency assistance.

THE COURT: Can you cite any other examples which you might say are established for aid and assistance in this particular category, ADC?

THE WITNESS: Those are the basic ones.

THE COURT; Would you state again. You have never, to

your knowledge, and you are the supervisor, refused assistance and aid to those [58] families who needed it that had not been separated from their spouses, or fathers, for a period of less than six months?

THE WITNESS: If we have established there has been a bona fide separation, no.

THE COURT: That's what I say, I'm trying to determine what you mean by bona fide separation, these terms are so simple to you and I know very difficult to define, but an accusation has been made here and we are trying to find what criteria do you use to determine bona fide separation. You understand you have been accused of turning aid down and assistance to recipients whose husbands have left the home but not for a period of six months, and you refused to give them aid and assistance unless separate maintenance or divorce action is filed, this is basically what the problem is before us and I'm trying to find out what bona fide separation means.

THE WITNESS: Well, as far as we can determine what we mean by it is that the chances, of course, the chances are this family will not reconcile in the near future, and——

THE COURT: Let us presume for the moment you believe there may be possibility of [59] reconciliation but the family needs aid, would you still suggest that there be a divorce action filed and separate the family?

THE WITNESS: We don't suggest that people file divorce actions unless they ask us if they can, and of course if they do we tell them where this resource may be found, but we don't suggest that they break up for the purpose of getting help from welfare.

THE COURT: Any further questions?

FURTHER RE-DIRECT EXAMINATION

Questions by MR. GEDDES

Q. Mr. McGruder, for clarification purposes now, do I understand that, visualize this, we have the case worker in the intake department interviewing the potential applicant, is that right?

A. Yes.

Q. Based on this interview and then the case worker makes his or her recommendations as far as need is concerned, is that right?

A. After they discussed it with their supervisor.

Q. Now, do I understand also in many cases you explain to the individual available resources for immediate relief?

A. Yes.

Q. What are some of those resources?

[60] A. The main one is Center Township Trustee who is directed by law to help people in any emergency for short term needs.

Q. In the case where recommendations are of need have you ever had where her decision is wrong and you had to overrule it?

A. Yes.

MR. GEDDES: I don't know if that helps clear it up or not. No further questions.

RE-CROSS EXAMINATION

Questions by MR. CURRY

Q. Mr. McGruder, under state law, as it now exists, there is no matter whereby a person can go into the Welfare Department and receive a check and walk out on that same day, is it not true the Board must act and grant assistance before a check is mailed out?

A. To my knowledge, yes.

Q. In other words, the State of Indiana does not have a program like some states whereby the Welfare Department fulfills the need of emergency assistance for today for tonight's mean, is that correct?

A. Right.

Q. Who does that in the State of Indiana?

A. Township Trustees.

Q. There is another point I would like to clarify. The State of Indiana does not have a welfare program, to [61] the best of your knowledge, whereby when a husband is merely unemployed and still in the home whereby a person can get assistance, do they?

A. No.

Q. Who would take care of need in this situation?

A. Legally the Township Trustees.

MR. CURRY: No further questions.

FURTHER RE-CROSS EXAMINATION

Questions by MR. MANNING

Q. Mr. McGruder, is the Township Trustee's office a functional of the Marion County Department of Public Welfare?

A. No.

Q. How is it related to it?

A. To my knowledge it is just another relief giving aid, that happens to be in the same building, one happens to be in the same building we are.

Q. But you said you sent some people to the Trustee?

A. Yes.

Q. Who do you send to the Trustee?

A. Anybody who needs emergency short term relief.

MR. MANNING: I have no other questions, Your Honor.

THE COURT: Very well. Thank you very much. You may be excused.

(Witnessed excused)

* * * * * * *

[62] MARTHENA TANNER, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. JOHN T. MANNING

Q. Would you state your full name, please?

A. Marthena Tanner.

THE COURT: Would you please keep your voice up enough so counsel at this table can hear you. These are not loud speakers.

Q. Where yo you live?

[63] A. 3012 E. Wade.

Q. What is your occupation?

A. I am not working.

Q. Are you married?

A. In the process of a divorce.

Q. How many children do you have?

A. Six.

Q. Did you ever apply for public assistance from the Marion County Welfare Department of Public Welfare?

A. Yes.

Q. When?

A. About the middle of July of this year.

Q. Do you know the exact date?

A. No.

Q. Where did you go to apply for public assistance from the Marion County Department of Public Welfare?

A. On the first floor of the City County Building.

Q. What happened when you went down there to apply?

A. Well, I talked to a lady, I don't remember her name, and she said we had to be separated or divorced legally.

MR. GEDDES: We would object to any conversation until a proper foundation is laid as to parties and who was present and when it was, and so forth.

[64] THE COURT: Sustained. Just a minute, Mr. Curry.

MR. CURRY: I had to make arrangements in the event the trial was conducted later tonight, certain employees to stay who we might wish to put on the stand, I would also like to state for the record I feel again the objection that would be made by Mr. Geddes would also be applicable to myself.

THE COURT: I understood when you made the objection first that holds for the entire hearing.

MR. CURRY: Thank you, Your Honor.

Q. Mr. Tanner, do you know the date that you went down to talk to that worker?

A. No, I don't.

Q. Do you know what month it was?

A. It was about the middle of July.

Q. Of what year?

A. Of this year.

Q. Do you know the worker's name?

A. No, I don't remember, the first worker I talked to.

Q. Did you talk to another worker whose name you remember?

A. Later on I went with Mr. Dieter, and we talked to Mrs. [65] Steele.

Q. But you don't remember the first lady's name?

A. No, I don't.

Q. Could you describe her in any way?

A. The best I can remember is she was small and had short blond hair.

Q. Where exactly did you talk to her?

A. In one of the little rooms they interview you in.

Q. Where?

A. On the first floor of the City County Building in The Welfare Department.

Q. Have you seen that worker today?

A. No.

Q. Is she here present, do you see her anyplace in the room?

A. No.

Q. Where did you see this woman, what building?

A. City County Building, in the Welfare Department.

Q. Where at in the City County Building?

A. In the little room they interview you in.

Q. Who interviews you?

A. The Welfare Department employees.

Q. I would again ask you, I suppose you will make some objection, what happened when you went to talk to this woman?

[66] MR. GEDDES: We would object, not to what happened, we object to any conversations, because the party she talked to has not been identified. We don't know who the person might be, an attempt to refute or rebut any testimony this witness——

THE COURT: May I ask a question here in order we made a determination for your objection. I gather there are certain of the employees in the County office who are here, and who will be witnesses.

MR. GEDDES: Yes, Your Honor, there are. The only thing I don't know is if any of them present are the ones she might have talked to.

THE COURT: This is precisely what I have in mind. I think at this time we will allow the testimony in, subject to the identification of this unknown individual, and if she is not identified by the end of the hearing the testimony will be stricken.

MR. GEDDES: Thank you, Your Honor.

Q. You may answer the question.

A. She told me that we had to be legally separated or divorced for six months before I could fill out an application.

[67] Q. Did she tell you her name?

A. That I don't remember, I imagine she did, but I don't remember.

Q. Did she have a badge plate on or a name plate on?

A. I don't remember that.

Q. Was anyone else present when you talked to her?

A. No.

Q. What happened then when she told you that, what did you do?

A. We had more conversation about different places I could go to find work and I told her that I had no place to go, that I had five of the children with me at the time and that I needed any kind of help that I could get. So, I went back over to Mr. Dieter's office and told him that they wouldn't let me fill out an application, so he came back over with me and we talked to Mrs. Steele and she said the same thing that we would have to be legally separated or divorced for six months and he was rather insistent about filling out an application and she finally gave me one.

Q. Who is Mr. Dieter?

A. My divorce lawyer from Legal Services.

Q. Did you see him here today?

A. Yes.

Q. Would you describe him?

[68] A. Tall, a burr hair cut, tall and thin is all.

Q. Where did you see him today?

A. I saw him when he came in the door and I saw him when he left.

Q. What time was that?

A. I don't know.

Q. And who is Mrs. Steele, if you know?

A. She is a worker in the Welfare Department.

Q. When did you talk to Mrs. Steele?

A. The same day that I went, about the middle of July, I don't remember the date.

Q. You mean everything you related happened on the same day?

A. Yes.

Q. What happened then after Mrs. Steele told you what she told you?

A. After Mr. Dieter talked to her she gave us an application and we went over to his office and he helped me fill it out, and I took it home, and I waited for several days, there was supposed to be someone come out and I waited for several days and I went ahead and mailed it in, and then in a few days a woman came from the Welfare Department to talk to me.

Q. At the time on that day, whenever it was, were you living with your husband?

[69] A. No.

Q. What was the status of your relationship with your husband?

A. We were separated and I had already filed for a divorce when I went to Welfare.

Q. How long had you been separated?

A. Just one day.

Q. You were separated one day and you went to Welfare the next day, is that correct?

A. Yes.

Q. What did you need when you went to Welfare Department, if anything?

A. I needed a home, we had no where to go, no food, well, we just needed a home and everything that goes with it.

Q. How old was your oldest child at that time?

A. 13.

Q. How old was the youngest child?

A. Two.

Q. Did you ever get any assistance from the Welfare Department?

A. Yes.

Q. How long did it take?

A. From the day I filled out the application it took a month.

[70] Q. No more than that?

A. No.

THE COURT: When you respond, respond verbally, rather than shaking your head.

Q. Did you get assistance for all of your children?

A. No, I did not, just for the oldest one.

Q. What do, do you know why that is?

A. Yes, because she was by a former marriage.

Q. Did you not get assistance for some of your children after a month?

A. There's four of them I'm not getting anything yet.

Q. Do you know why?

A. Because we have not been separated or divorced for six months.

Q. How do you know that is the reason?

A. Because that is what they told me.

Q. Who told you?

A. The two ladies that I have talked to from the Welfare Department.

Q. Do you know their names?

A. The first one I don't know, the second one was Mrs. Steele.

Q. You mean you had some notice after that day you talked to all of these people and made your application, you got some further notice from [71] someone or did you not get any further notice?

A. The only notice I got is, I was going to receive Welfare for myself and my oldest daughter.

Q. Did you get any further notice after that day in any form that you were not going to get anything because you had not been separated long enough?

A. No.

Mr. Manning: I have no other questions of this witness.

Cross examination

Questions by Mr. Robert Grigors

Q. Mrs. Tanner, do I understand that you separated from your husband sometime in July of this year?

A. Yes.

Q. And do I also understand you correctly that you went to the Welfare Department within a few days?

A. Yes.

Q. Was that two or three days?

A. Yes.

Q. Do I also understand your testimony you filed for divorce before you went down to the Welfare Department?

A. Yes.

Q. Now, when did you actually file the application for assistance, was that two or three days after you separated?

[72] A. Yes.

Q. When did you actually receive assistance?

A. A month after I had made out the application.

Q. In August?

A. Yes.

Q. Approximately August, 1970?

A. Yes.

Q. At the time you received this assistance do you remember being notified and being advised that if you were not satisfied with the amount that you could appeal that?

A. Being notified?

Q. Yes, you remember when you received notification of the monthly assistance allowance or award, do you remember also on that form being notified you could appeal if you were not satisfied with the amount?

A. It was on the paper that I got stating that my daughter would be the only one receiving it, welfare.

Q. On that same form was there a card saying if you were not satisfied with the amount you could appeal it, do you remember that?

A. Yes.

Q. Now, at that time I understand you were also going to Mr. Dieter, is that correct?

A. Yes.

[73] Q. And he was your attorney?

A. Yes.

Q. Did you at any time appeal that decision to the State Department of Public Welfare?

A. No.

Q. Did you at any time appeal that decision to the County Department of Public Welfare?

A. No.

Q. Did you at any time appeal that decision to the State Board of Welfare?

A. No.

Q. Now, Mrs. Tanner, are you presently employed?

A. No.

Q. And were you employed when you separated?

A. No.

Q. Were you receiving any other assistance when you started receiving welfare assistance?

A. I was getting $30.00 food order from the Trustee each week.

Q. Each Week?

A. Yes.

Q. Who were you living with at the time?

A. Friends.

Q. Did you advise also your attorney of how much you were receiving per month from the Welfare Department?

[74] A. I told Mr. Dieter how much I was receiving, yes.

Q. But at no time, I understand, did he in your behalf file an appeal?

A. No, he did not.

Q. And you personally did not appeal?

A. No.

MR. GEDDES: No further questions, Your Honor.

MR. CUBBY: No further questions, Your Honor.

THE COURT: Mrs. Tanner, on your first visit by whom were you accompanied, if anyone?

THE WITNESS: No one.

THE COURT: You went alone?

THE WITNESS: Yes.

THE COURT: How did you get in touch with Mr. Dieter after your first visit?

THE WITNESS: After my first visit to the Welfare?

THE COURT: Yes, how did you happen to go to Mr. Dieter?

THE WITNESS: I had already been to him about my divorce before I went to Welfare.

THE COURT: About how long before you went to the Welfare office?

[75] THE WITNESS: I don't remember whether it was the same day or the day before.

THE COURT: As I understand what you said you made a second visit to the County Welfare office?

THE WITNESS: Yes.

THE COURT: On the same day at which time Mr. Dieter accompanied you and you visited with Mrs. Steele?

THE WITNESS: Yes.

THE COURT: At the time you received your first check in about August of 1970, did you show that form to anyone, the notice form for the amount of money you received?

THE WITNESS: No.

THE COURT: Did you show it to Mr. Dieter?

THE WITNESS: I don't think so.

THE COURT: Did you read the entire form?

THE WITNESS: Yes.

THE COURT: What generally does it say on that form?

THE WITNESS: On the back of it, I can't remember what it says, all I know—

THE COURT: I'm only asking what you remember about the form, what did it say?

[76] THE WITNESS: All I can remember is that my oldest daughter was the only one that was going to receive welfare.

THE COURT: For you and your eldest daughter?

THE WITNESS: Yes.

THE COURT: Did it say why you would receive only for yourself and your daughter?

THE WITNESS: Not——

THE COURT: Do you know to this day why she and you are the only ones receiving welfare?

THE WITNESS: Yes, I know.

THE COURT: How do you know?

THE WITNESS: Because, like I said before, the two ladies, the one I don't remember her name and Mrs. Steele said I would have to be legally separated or divorced for six months before I could receive aid.

THE COURT: Have you seen this first lady or Mrs. Steele since that first day you visited the Welfare office?

THE WITNESS: No, I have not.

THE COURT: Has any other person from the Welfare office contacted you since that first [77] visitation?

THE WITNESS: My case worker has.

THE COURT: Who is the case worker?

THE WITNESS: Mr. Bradley.

THE COURT: Have you discussed this with Mr. Bradley?

THE WITNESS: No. He made a house visit, I don't know, four or five weeks ago, and I still don't have beds in by house, I have some furniture that was ready to be dumped and they gave it to me rather than dump it.

THE COURT: Who gave it to you?

THE WITNESS: Relatives of my husband.

THE COURT: I thought you said you were living with friends at the present time.

THE WITNESS: I was.

THE COURT: Where are you living now?

THE WITNESS: 3012 E. Wade, the low income housing.

THE COURT: You are not living with friends, you have your own housing accommodation?

THE WITNESS: No, not then, I was living with friends.

THE COURT: No, I say now.

THE WITNESS: I'm by myself now.

[78] THE COURT: Do you have any income other than this welfare check?

THE WITNESS: No, I don't.

THE COURT: And you receive a $30.00 a week order from the Township.

THE WITNESS: No, I don't, they stopped.

THE COURT: I'm sorry, not order, it was food order.

THE WITNESS: That was until I received welfare.

THE COURT: But you are receiving nothing from the Township today?

THE WITNESS: No, I'm not.

THE COURT: What are you receiving by way of aid from the County, how much money?

THE WITNESS: All I receive is $100.00 a month from welfare.

THE COURT: Any further questions following the court's questions?

MR. GEDDES: No further questions, Your Honor.

THE COURT: By the way, Mr. Tanner, have any attempts been made to find your husband, Mr. Tanner?

THE WITNESS: I know where he's at.

[79] THE COURT: Where is he?

THE WITNESS: Right now he is in, the last I heard he was in Spencer, Indiana.

THE COURT: Spencer, Indiana?

THE WITNESS: Yes, he is not working and we are to go to court the 30th again for nonsupport. We went the 5th of this month for non-support.

THE COURT: You have taken action to get support from him for your children?

THE WITNESS: Yes, and he was supposed to be paying it now, but he hasn't yet.

MR. GEDDES: Just a few questions.

RE-CROSS EXAMINATION

Questions by MR. GEDDES

Q. Mrs. Tanner, am I correct in saying that there is a court order for your husband to pay support?

A. Yes.

Q. What is that court order?

A. You mean the amount?

Q. Yes.

A. $50.00 a week.

Q. Has your husband paid you anything for support?

A. Not since September.

Q. Back in September of this year, wasn't he paying [80] $40.00 a week?

A. For two weeks he paid $40.00 a week.

Q. Were you and your husband ever separated before this last separation?

A. Yes, we were.

Q. How many times?

A. Two other times.

MR. GEDDES: No further question, Your Honor.

JUDGE STECKLER: How long were you separated on those occasions?

THE WITNESS: The first time I had went up and filed for divorce and then I called it off, we did not separate.

JUDGE STECKLER: How long were you separated, you did not separate at all?

THE WITNESS: No, not the first time.

JUDGE STECKLER: How about the second time?

THE WITNESS: The second time we were separated for six weeks and he was in the alcoholic ward at Central Hospital for 35 days and I had filed for divorce then and after he came out of the Hospital we went back together and then I left again this year. He is an alcoholic, just won't support the kids.

[81] THE COURT: Mr. Curry.

CROSS EXAMINATION

Questions by MR. CURRY

Q. You testified that you had an attorney when you went to the Welfare Department, according to your testimony, the second time, to fill out an application, is this correct?

A. Yes.

Q. Did you let that attorney know that you received Welfare benefits?

A. Yes.

Q. Did you let him know how much you received?

A. Yes.

Q. In other words, you told him both the fact you did receive benefits and how much?

A. Yes. Now, when he helped me make out the application he added a letter on there stating he thought this was an extreme hardship case and that he felt I should get, receive welfare for all of them.

Q. But he did not appeal this decision?

A. No.

MR. CURRY: No further questions.

THE COURT: That is all. Thank you Mrs. Tanner.

(Witness excused)

[82] SANDRA WATKINS, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. DAVID SHADEL

Q. Would you please state your name.

A. Sandra Watkins.
Q. Where do you live?
A. 328 Augden Drive.
Q. Is that in Indianapolis, Indiana?
A. Yes.
Q. Are you a married lady?
A. Yes.
Q. How many children do you have?
A. Six.
Q. Is your husband the father of all those children?
A. Yes.
Q. What are their ages?
A. 9, 7, 6, 4, 2 and 2 months.
Q. Have you ever had any contact with the Marion County Department of Public Welfare?
A. Yes.
Q. When was that, the first time?
A. In June.
Q. Of what year?
A. '70.
[83] Q. What did this contact consist of?
A. I needed help for my children.
Q. What did you do at that time?
A. At the time I needed help, I went down there.
Q. Down where?
A. To the Department of Welfare.
Q. Where is that?
A. At the City County Building.
Q. What did you do at that time then, there?
A. At that time I went in and asked for help but I—
Q. Did you have a conversation with anyone at that time?
A. Yes.
Q. Do you know who you had a conversation with?
A. The secretary, I thought.
Q. Where was this?
A. At the Welfare Department, at the intake office.
Q. Where did this, what did this conversation consist of?

Mr. Geddes: We would object, unless a proper foundation is made and some identification of the persons she had a conversation with.

The Court: Yes, at the time you made your first visit there, Mrs. Watkins, who did you speak to, do you know the name of the lady you spoke to?

[84] THE WITNESS: First I talked to a receptionist at the desk, she told me to wait and then they called my name and I talked to an intake worker.

THE COURT: Intake what?

THE WITNESS: Intake worker.

Q. Her name is?

A. Mrs. Marchonie.

Q. Did you have a conversation with Mrs. Marchonie at that time?

A. Yes.

Q. What did this conversation consist of?

A. I told her I needed help and she told me, asked me how long I had been separated and she said I had to wait for six months.

Q. You had to wait for six months before what?

A. Before I could receive help and then she told me I had to go to a lawyer and apply for my legal separation or divorce, this would help, and to get a note from the lawyer, and I did this.

Q. This first time you went down to the Welfare Department and had the conversation with Mrs. Marchonie did you fill out an application form at that time?

A. No, I did not.

Q. Why did you not fill out an application form at that [85] time?

A. She said I had to be separated for six months, it wouldn't do any good, because I had to wait.

Q. When you went down to the Welfare Department at that time and had the conversation with Mrs. Marchonie, how long had you been separated from your husband?

A. About two weeks.

Q. Did you know where your husband was?

A. No, not at the time.

Q. When did you next hear from your husband?

A. About the, about in July.

Q. When you went down to the Welfare Department and had that conversation with Mrs. Marchonie was it your intention to stay separated from your husband at that time?

A. Yes.

MR. GEDDES: We would object to that question, it's leading and suggestive.

THE COURT: Yes, sustained.

Q. At the time you had that conversation with Mrs. Marchonie, what were your intentions regarding your situation with your husband?

MR. GEDDES: Your Honor, we would again object as to what her intentions were or would not be.

[86] THE COURT: She may answer.

A. Well, at the time I was pregnant at the time.

Q. How far pregnant were you?

A. I was going into my 8th month at the time and I more or less was trying to get something in there for the children to get prepared for the hospital because the doctor said the baby might be, you know, coming in July.

Q. What was your intention, as far as your relationship with your husband, at that time?

A. Well, at the time I had planned to, you know, get a separation right at the moment.

Q. You mean a legal separation?

A. Right.

Q. At that time again, did you know where your husband was?

A. Not at that time, no.

Q. At that time were you working?

A. No.

Q. Were you receiving any income from any source when you went to the, to talk with Mrs. Marchonie?

A. From the Trustee.

Q. When did you first begin receiving help from the Trustee?

A. Oh, about the 14th or 15th of June.

[87] Q. Was this before you went down to fill out—strike that. Was this before you had that conversation with Mrs. Marchonie?

A. Yes.

Q. What help was the trustee furnishing you with?

A. With my food, I got $21.00 for a food order and they paid a month of the rent, but I was behind on it.

Q. How far behind were you?

A. Let's see, I was about 5 months.

Q. Were there any consequences of your being behind in your rent?

A. Yes, I was going——
Q. What were those?
A. I was going to be evicted.
Q. Did you have enough money to clothe your family at that time?
A. No, I had no money at that time.
Q. Now, what does your education consist?
A. I went to the 10th grade in high school.
Q. How old are you?
A. 24 years old.
Q. What were your utility payments at that time, were you caught up or were you behind?
A. Well, I don't pay utilities.
Q. Where were you living at this time?
[88] A. Living in a housing project, at Tibbs and Michigan.
Q. Is this public housing?
A. Yes.
Q. Did you ever return to the Welfare Department after that first conversation with Mrs. Marchonie?
A. No, I didn't return, someone went for me.
Q. Did you ever fill out an application form?
A. They send one in the mail.
Q. Who went for you?
A. CAAP worker.
Q. When did you first begin to receive any assistance from the Marion County Department of Public Welfare?
A. September 1st.
Q. What year?
A. 70.
Q. Did you have any further conversations with Mrs. Marchonie after that first conversation in her office?
A. She came to the house to get the application.
Q. What did the conversation consist of?
A. First she apologized for loosing the note the lawyer had sent.

THE COURT: Would you please keep your voice up, we're close to you and we can't hear, I'm sure counsel at the table cannot hear you, [89] we all should have the opportunity of listening to everything you say.

A. She apologized for the note she had lost.

THE COURT: Who apologized?
THE WITNESS: Mrs. Marchonie apologized.

Q. For what note?
A. That the lawyer had sent, you know, so she could see I had to apply for my divorce.
Q. What amount was your first check from the Welfare Department?
A. $200.00.
Q. How many children do you have?
A. Six.
Q. Were you working at that time when you received your first check?
A. No, I was not.
Q. Were you receiving any other public assistance at this time—strike that. Were you receiving any assistance from any other source at that time?
A. No, not at the time.

MR. SHADEL: No further questions.

CROSS EXAMINATION

Questions by MR. ROBERT GEDDES.

Q. Mrs. Watkins, going back here, when did you and your husband separate?
[90] A. In June.
Q. Was that in the middle of June?
A. No, the first of June, first week of June.
Q. Was that your first separation?
A. No, that's not the first time.
Q. How many times have you separated before?
A. About once or twice.
Q. What is your husband's name?
A. Ronald.
Q. Is he employed?
A. Yes.
Q. Where is he employed?
A. Interocean.
Q. What is his job there?
A. He is an insurance agent.
Q. How long has he been an insurance agent?
A. Off and on about 9 years or 10 years.
Q. Are you and Mr. Watkins still married?

A. Yes.
Q. Has either one of you filed for divorce?
A. No, I haven't signed any papers.
Q. To make it clear now, you and your husband separated in June, is that right?
A. Yes.
Q. Of 1970?
[91] A. Yes.
Q. And you have not filed for divorce?
A. I haven't signed any papers as yet.
Q. When did you file an application for welfare benefits?
A. I didn't file until in July.
Q. July?
A. I mean August.
Q. And I understand you started receiving benefits effective September 1?
A. Yes.
Q. So, in other words you started receiving benefits less than three months after you and your husband separated, is that right?
A. Yes.
Q. And you have not filed for divorce?
A. No, I haven't sign the papers, no.
Q. What are the benefits you are presently receiving?
A. From the welfare, $225.00.
Q. Per month?
A. Yes.
Q. And I understand when you first started receiving benefits was it $200.00 a month?
A. Yes.
Q. Then it increased when you had this other baby?
A. Yes.
[92] Q. Do you know whether or not that is the maximum benefit allowed by law?
A. No, I do not.
Q. In addition to the welfare benefits were you receiving any support from your husband?
A. In—he paid money in dribbles in July.
Q. Was he paying you 50 or 60 a week?
A. In dribbles.
Q. Do you have a support order against your husband?
A. No.
Q. Do you have an attorney representing you?

A. Yes.

Q. Who is that?

A. Clopper, Clopper I think his name.

Q. Has Mr. Clopper filed any petition with the court for support order?

A. Not that I know of.

Q. As I understand it in addition you were receiving some benefits from the Township Trustee?

A. Yes.

Q. Did you stop receiving those benefits immediately?

A. I would say in about two days.

Q. Two days after you and your husband separated?

A. No, after I guess about two weeks.

Q. Two days after you filed?

[93] A. I say about two weeks.

Q. In other words you and your husband separated and about two weeks later you started receiving benefits from Township Trustee?

A. Yes.

Q. Did you continue to receive those benefits when you started receiving welfare benefits?

A. No, they stopped it.

Q. But you were receiving benefits at least until you received welfare benefits?

A. Yes.

JUDGE STECKLER: How much did you receive from the Township Trustee?

THE WITNESS: $21.00.

Q. What type of housing were you living in at the time?

A. I live in a project.

Q. Is it public housing?

A. Yes, it is.

JUDGE STECKLER: What were those accommodations?

THE WITNESS: That includes my rent and my utilities—I only have to pay for my rent, you know, the utilities was not added.

JUDGE STECKLER: But physically how many rooms?

[94] THE WITNESS: I have three bedrooms, three bedrooms, front room and kitchen and bathroom.

Q. Did the public housing include utilities and everything but rent?

A. Yes.

Q. Did I understand you correctly, the Township Trustee took care of when you went to them they took care of a month's rent?

A. Yes, a month.

Q. And I also——

THE COURT: How much is that, about?

THE WITNESS: I think mine is 64, I think, but they pay 30 something, I think.

THE COURT: Are you still living there?

THE WITNESS: Yes.

Q. You remember when you had your deposition taken, Mrs. Watkins?

A. Yes.

Q. I believe at that time you said your husband, in addition your husband was making support payments on a regular basis.

A. That was in August.

Q. Yes, no that was just recently, that was back in November 5, 1970.

[35] A. Yes, oh yes.

Q. How much was, does he make?

A. 50 to 60 dollars.

Q. Every week?

A. Yes.

Q. But you did start receiving welfare benefits about a month after you applied, is that right?

A. Yes, after they came and got the application.

Q. And you were separated less than 3 months?

A. Yes.

MR. GIBBONS: No further questions.

CROSS EXAMINATION

Questions by MR. CURRY

Q. How did you learn that you were going to receive benefits from the Welfare Department, did you receive a letter?

A. No.

Q. Did you receive the first check?

A. You see, the intake worker came out, she told me I would.

Q. When you received your first check did you receive a letter with it?

A. No.

Q. You did not?

A. No, just blue cross and blue shield card, that's all, [96] with the check.

THE COURT: Blue cross and blue shield card with the check.

Q. Without going into that particular aspect, did an attorney in any way assist you in, or in your mind assist you in getting ADC or getting benefits?

A. Say that again.

Q. Did an attorney, in any way, help you in getting benefits?

A. No.

Q. Did you ever ask for more benefits than you are getting?

A. No.

Q. In other words you have no reason to want more benefits than you are getting, is that correct?

A. I could use it, yes.

Q. But you have not asked for more?

A. No.

Q. Or stated a dissatisfaction for the amount you are getting, is that correct?

A. Am I satisfied with it?

Q. You haven't raised any dissatisfaction with what you are getting now, formally say you want more money to the people at the Welfare Department, anything like that?

[97] A. No, I haven't said anything.

Q. So there is, what I am driving at is quite obvious, in this respect then you in no way have told people you would like to appeal what you are now getting, is that correct?

A. I don't understand the question.

Q. Have you told anyone that you are dissatisfied or were dissatisfied with what the Welfare Department gave you to the extent you would like to have this reviewed by a higher authority?

A. No.

MR. CURRY: No further questions.

JUDGE STECKLER: Mrs. Watkins, were you subpoenaed to appear here today?

THE WITNESS: Yes.

JUDGE STECKLER: Do you know why you are here today?

THE WITNESS: Not really.

JUDGE STECKLER: You haven't been told?

THE WITNESS: Sort of, Yes.

JUDGE STECKLER: What were you told in that regard?

THE WITNESS: That, you know, that I was treated unjustly, you know, because when I went down there I should have signed an application [98] at the time but whether I was refused or not I should sign an application at the time.

THE COURT: Very well.

RE-DIRECT EXAMINATION.

Questions by MR. DAVID SHADEL

Q. Mrs. Watkins, referring again to the assistance that the trustee helped you with, did he pay the full month's rent?

A. No.

Q. How much of the rent did he pay?

A. There was $36.00, I think it was $30.00 or $36.00.

Q. What is the total amount of rent?

A. $64.00 or $66.00.

Q. How many times did the Trustee pay this amount?

A. One time.

Q. Just one time?

A. Yes.

Q. Did he supply you with anything other than that?

A. No.

Q. And the $21.00 food order?

A. No.

Q. Did you have needs at the time you had the conversation with Mrs. Marchonie, which you did not have the money to meet?

A. Yes, I needed clothing for the children, I had to [99] prepare for the baby, you know.

Q. Again referring to this first conversation with Mrs. Marchonie, did at that time you fill out an application form?

A. No.

Q. Why didn't you?

A. She said it wouldn't do any good anyway because I had to be separated for six months.

MR. SHADEL: I have no further questions.

THE COURT: Thank you very much, Mrs. Watkins.

(Witness excused)

JEAN LUKE, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. DAVID SHADEL

THE COURT: Before you begin answering any questions, I hope you will keep your voice up so counsel at that table can hear you as well as the Judges here. Will you do that.

Q. Please state your name to the court.

A. Jean Luke.

Q. Go ahead and speak up, speak slow, loud and distinct, so that they can hear you over there. Are you a married [100] lady?

THE COURT: I believe if you stand away the witness is more apt to speak to you.

A. Yes, I am married.

Q. Do you have any children?

A. 3 boys.

Q. What are their ages?

A. 6 years, 4 years and 3 months.

Q. Where do you live now?

A. 1656½ Park.

Q. Indianapolis, Indiana?

A. Indianapolis, Indiana.

Q. Have you ever had any contact with the Marion County Department of Public Welfare?

A. Yes, I have.

Q. When was the first time you had any contact with them about?

A. It was March of 1970.

Q. How did you come to have contact with them?

A. I went down to apply for assistance.

Q. Where did you go?

A. First floor of the City County Building.

Q. To the Welfare Department there?

A. Yes.
Q. This was in March of 1970?
[101] A. Yes.
Q. Did you have a conversation with anyone down there at that time?
A. Yes, I did.
Q. Do you know who you had a conversation with?
A. The receptionist took my name and told me to wait.
Q. What happened after that?
A. My name was called and I went in another office and talked to the other lady.
Q. Do you know her name?
A. No, I don't.
Q. Have you seen her since then?
A. Yes, I have.
Q. When was the last time you saw her?
A. Today.
Q. Where bouts?
A. Here.
Q. What does she look like?
A. She is a young lady, got long hair.
Q. What color hair?
A. Blond hair, I think.
Q. Is she a white lady?
A. Yes, sir.
Q. Would you say she was young or old?
A. In her twenties.
[102] Q. Do you remember what color dress she had on?
A. Green striped.
Q. You had a conversation with this woman back in her office?
A. Yes, I did.
Q. What did this conversation consist of?

Mr. Geddes: Your Honor, the only objection we would like to make at this time so we will know who we are talking about.

The Court: We will allow this testimony on the same basis as our rule previously subject to identification, by the witness, otherwise it will be stricken.

Q. What did this conversation at that time consist of?
A. I told her I needed help and she asked me was I separated from my husband, I told her yes, I told her when

and she told me I would have to wait until I could apply for legal separation before I could get help.

Q. Did you fill out an application on that day?

A. No, I didn't.

Q. Why didn't you?

A. She told me I had to apply for separation before I could fill out an application.

Q. Where was your husband at this time?

[103] A. In Key Lardo, Florida, in jail.

Q. How long had he been in jail, about?

A. I would say about a month.

Q. Did you—strike that. Did you know when he was going to be out of jail?

A. No, I didn't.

Q. Were you planning to resume a marriage or begin living with him when he did get out of jail?

A. Yes.

Q. When did you fill out an application for welfare?

A. It was in March, after I brought the papers back to the lawyer.

Q. What papers are these?

A. A paper to show I had applied for a divorce.

Q. Did you give this paper back to the welfare worker?

A. No, I showed it to her, she didn't want it, she looked at it.

Q. Now, at this time.

THE COURT: I would like to determine who the attorney was.

Q. At this time when you had applied or were trying to apply for welfare, why did you go see an attorney?

A. The lady told me I had to go see one.

Q. Who did you go see?

A. I don't remember his name but he is on Broadway and [104] 17th Street.

Q. Might it be a gentleman by the name of Mr. Morris Klapper?

A. Yes, I think so.

Q. You said you went back and took that paper and gave it back to the worker, did you fill out an application at that time?

A. She gave me the papers and I tool them home and filled them out and she came and got them.

Q. As a result of that application, are, did you receive

any public assistance from the Marion County Department of Public Welfare?

A. Not until August 1st.

Q. Why didn't you receive it until August?

A. I had to wait six months, you see.

Q. Who said that?

A. The worker.

Q. When you had gone down to apply for assistance that first time were you receiving any support from your husband?

A. No, I wasn't.

Q. Were you receiving any income from any source?

A. I was getting food stamps from the Trustee.

Q. Was the trustee giving you any other assistance?

A. No.

[105] Q. Did you have needs of your family at that time, which you did not have the money to meet?

A. Yes, I did.

Q. How was that?

A. I needed money to pay rent, I needed money for clothing, and I was pregnant.

Q. How far pregnant were you then?

A. I was four months.

Q. Of what does your education consist, how far did you go through school?

A. To the 9th grade.

Q. Through the 9th grade?

A. No, to.

Q. Just up to it?

A. Yes.

MR. SHADEL: I have no further questions.

CROSS-EXAMINATION

Questions by MR. ROBERT GEDDES.

Q. Mrs. Luke, when did you and your husband separate?

A. It was in March.

Q. Is this the first separation?

A. No.

Q. How many times have you separated before?

A. This makes the second time.

Q. Now, this second time you separated was your husband

[106] working?

A. Yes.
Q. Where was he working?
A. At a car wash, I don't remember the name.
Q. Did he give you any support payments?
A. No.
Q. You weren't receiving any benefits from anybody else, Trustee or anybody else?
A. No.
Q. When did you say you filed your application with the Welfare Department?
A. In March of 1970.
Q. You sure it was in March 1970?
A. Yes, before when I separated, I applied for divorce, I mean I applied for assistance, but my husband came back to me, and I didn't need it.
Q. You mean you withdrew your application then?
A. Yes.
Q. When was it you applied before, was that '69?
A. In '68.
Q. You are not a party plaintiff in this lawsuit, are you—excuse me, strike that. When did you start receiving welfare benefits?
A. August the 1st.
Q. Of 1970?
[107] A. Yes.
Q. How much were you receiving, how much did you receive?
A. 125.
Q. A week or month?
A. A month.
Q. Are you receiving any other benefits?
A. No.
Q. Is your husband working now?
A. No, he's not.
Q. Are you and your husband still separated?
A. Yes.

THE COURT: Mrs. Luke, where is your husband now?
THE WITNESS: He's in Chicago.
THE COURT: He is out of jail?
THE WITNESS: Yes.
THE COURT: Do you know where he is in Chicago?
THE WITNESS: Yes.

THE COURT: Have you taken any action to try to get child support and alimony for yourself?

THE WITNESS: Well, I talked to the policemen about him and they said they couldn't go and get him, because he was in Chicago.

[108] THE COURT: Have you talked to Mr. Klapper about it, does he know where your husband is?

THE WITNESS: I told him when I went to see him at first, but I haven't told him since then.

JUDGE STECKLER: Who is paying Mr. Klapper?

THE WITNESS: I don't know.

JUDGE STECKLER: Do you know who is paying his attorney fees for your divorce action?

THE WITNESS: No.

JUDGE STECKLER: You see, we wouldn't know, is the reason I asked, you're not paying him?

THE WITNESS: No.

Q. Is Mr. Klapper an LSO Lawyer, is Mr. Klapper with the Legal Services Organization?

A. Yes.

Q. When did you first go to Mr. Klapper?

A. In March.

Q. Right after you were separated?

A. Yes.

Q. You say you went and filed an application in March?

A. Yes.

[109] Q. And you took it home with you?

A. Yes.

Q. But you didn't file—strike that. You filed it in March also?

A. The first time I went to apply for assistance she told me I couldn't fill out an application because I had to apply for my legal separation before I could fill out one.

Q. When was that?

A. It was in March too.

Q. Did you tell Mr. Klapper that?

A. Yes.

Q. What did he do?

A. He wrote a letter showing I had been to see him for separation and I took that to her.

Q. Then you filed an application?

A. Yes.

Q. After you started receiving benefits from the application did you tell Mr. Klapper what you were receiving?

A. No.

Q. Did you have any complaints over how much you were receiving?

A. No.

Q. I gather then you did not make any complaints to [110] anybody as to the amount you were receiving?

A. No.

JUDGE NOLAND: At the time you went into the Welfare Department, did you intend at that time to file an action for separation and divorce?

THE WITNESS: No.

JUDGE NOLAND: Do you want to go through with the divorce action at this time, are you planning on going ahead and getting a divorce at this time or not?

THE WITNESS: Yes.

JUDGE NOLAND: You are planning on getting a divorce?

THE WITNESS: (Shakes head yes)

JUDGE NOLAND: Because somebody else suggested it to you or because you really intend to get one because you think you ought to get one?

THE WITNESS: Because I think I ought to get one.

JUDGE NOLAND: You think you ought to get one?

THE WITNESS: (Shakes head yes)

MR. GEDDES: No further questions, Your [111] Honor.

THE COURT: Thank you very much, Mrs. Luke.

(Witness excused.)

MR. MANNING: The plaintiffs call Tony Davis.

TONY DAVIS, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. JOHN MANNING

THE COURT: Not only must we hear you, but the gentleman over here at the table as well. We are all interested in what you are going to say.

Q. Witness, what is your full name?

A. Tony Marie Davis.

Q. Where do you live?

A. 3270 Balsam Ave.

Q. Where is that?
A. Northeast.
Q. What city is that in?
A. Indianapolis, Indiana.
Q. What is your occupation?
A. I'm a unit secretary at Methodist Hospital.
[112] Q. How long have you been so employed?
A. I have been employed for about three years, two or three years.
Q. How much do you make on that job?
A. I now make $2.60 an hour.
Q. How much net pay do you get, paid for or whatever it might be?
A. Some weeks I get $135.00, every two weeks and other weeks I get $160.00 every two weeks, it depends.

THE COURT: I'm afraid you're dropping your voice.

A. I'm sorry. It depends on whether they take out blue cross blue shield insurance.

THE COURT: You say it varies between what?
THE WITNESS: $130 and $160.

Q. How many children do you have?
A. I have two children.
Q. How old are they?
A. I have a boy four months and a girl 3½ years old, in December.
Q. Does someone watch the children while you work?
A. Yes, I have a baby sitter, Una Henry, right across the street.
Q. How much do you have to pay Mrs. Henry?
[113] A. I pay her $15.00 a week.
Q. Do you take that out of your wages?
A. Yes, I take it out of my wages.
Q. Are you married?
A. Yes, but I'm separated.
Q. Are you separated right now?
A. Yes.
Q. How long have you been separated?
A. Since about April or May, I can't remember.
Q. Have you seen your husband during that period of time?
A. Yes, I saw him twice, I saw him about a month ago,

he came up to the house drunk and wanted to see the baby and I wouldn't let him and then I saw him about 3 days ago and he came over to bring some clothe that his sisters little girl used to wear, to see if I could use them, and he wanted to know if he could come back in the house, but he was drunk then too, so I wouldn't let him come in.

Q. Under what circumstances did you separate from your husband?

A. Extreme mental cruelty to me and my daughter and nonsupport, he wouldn't work and take care of us, I was borrowing money from my mother and friends, my Grandmother and my Sister to take care of me, but [114] I didn't want them to take care of him when he could help himself.

Q. In what way was he cruel to you?

A. Well, mentally——

Mr. Geddes: I object that is outside the issues.

The Court: Sustained. This is not a divorce action, I don't think we need to go into those details.

Q. Have you ever received——

The Court: I didn't get the time of separation, did you ask?

Q. When did you separate from him?

A. I think it was first part of April, I'm not sure.

Q. Of what year?

A. Of this year, 1970.

Q. What were your circumstances at the time you separated from your husband?

A. You mean why I separated?

Q. No, what were your——

A. Oh, we were behind in utilities, rent and everything else because he wouldn't go to work and when he did go to work, maybe like one day out of two weeks he wouldn't come home on pay day so we could have food or anything, he would go out and get drunk and then [115] break into the house and disturb everybody and my little girl was scared and nervous and I was pregnant and I couldn't take to much, my blood pressure was rising so I had to put him out, I couldn't stand it.

Q. How far pregnant were you?

A. I think it was around 6½ months.

Q. Did your husband leave you or did you leave your husband?

A. I had to make him leave.

Q. He left voluntarily then?

A. He didn't put up a fight.

Q. When next did you see your husband after that, after he left, how long was it?

A. I don't know, I think he was drunk a few days after I put him out and he come by and knock out windows or something like that, and until you know I threatened to call the police or call my father to make him go away, and then I didn't see him anymore for a long while.

Mr. Gaddis: We would object to all this testimony, it would be highly irrelevant to the case here.

The Court: I quite agree, we are getting a little wild.

Q. Have you ever applied for any kind of Public assistance?

[116] A. No.

Q. From the Marion County——

A. Beg your pardon?

Q. Have you ever applied for any kind of assistance from the Marion County Public Department of Welfare?

A. No, I haven't.

Q. You never have?

A. No, I haven't.

Q. You have never been to the Marion County Department of Public Welfare?

A. No.—you mean before this?

Q. At any time?

A. Oh, yes, I've been in this year.

Q. We're talking about anytime.

A. Yes, I have.

Q. When did you apply?

A. It was around the middle of April, I guess, I don't remember the date.

Q. In relation to when your husband left you, how long was it?

A. It was after, because my mother had been helping us all they could and they couldn't help us anymore. She said see if I could get Public Assistance, and it may have been a couple weeks after that because they had been helping us since February.

[117] Q. Did you get any public assistance?

A. No, I mean anytime:

Q. Let's talk about that time.

A. Well, when I did go down there and apply, I went to the Welfare, they told me to go upstairs and I went upstairs to the Trustee's office, they told me to go down to Welfare and I told them I had been there and they let me fill out an application the second time I had been up there and when I was filling out the application Mrs. Smith, the Trustee, she told me that——

MR. GEDDES: Your Honor, we would object to a conversation, this witness might have had with Mrs. Smith.

THE COURT: Sustained.

Q. Did you get any assistance from the Trustee?

A. Yes.

Q. How much?

A. At first I got $15.00 food a week, and then later on when I got disconnect they paid it.

Q. At the time you mentioned just now, do you know who you talked to in the Marion County Welfare Department by name?

A. The first time or anytime?

Q. The first time?

[118] A. No, I don't know who it was the first time.

Q. But whoever it was they sent you up to the trustee?

A. Yes.

Q. Did you ever go back to Marion County Welfare Department?

A. Yes.

Q. When, how much later?

A. It may have been a weekend or it may have been a week, but wasn't too much from that, I don't remember that dates, that is when I filled out my application and I had my interview the same time and then they told me they would notify me within 30 days whether I could have that assistance or not and they would send a worker out to my home shortly and nobody ever came out.

Q. Do you know who you talked to at the Welfare Department the second time?

A. Not by name.

Q. But it was somebody inside the Welfare Department's office?

A. Yes, she introduced herself to me, but I would know

her if I seen her, but she is not here today, and I don't know her name.

Q. Did she give you a card of any kind?

A. Not that I can remember.

Q. Did she write her name down for you?

[119] A. Not that I can remember.

Q. Did you ever see her again after that?

A. No, I didn't.

Q. Did you get any assistance as a result of either of those visits?

A. From Welfare?

Q. Yes.

A. No; I didn't.

Q. What did you get?

A. I got a letter saying that I was denied.

Q. Did it say any reason?

A. Because no six months separation.

Q. How long had you been separated at the time?

A. I'd say about a month, maybe two weeks.

Q. So, in fact, you had not been separated for six months?

A. No.

Q. Did you apply again or did you have any further dealings with Marion County Welfare Department?

A. Yes,—well not with the Welfare Department, they said that if I didn't like the decision I could appeal it, so I went to the court of appeals and appealed it.

Q. How did you do that?

A. I just went to where the letter stated to go on Senate [120] Street, I believe and I filed an, well, when I first went up there she told——

THE COURT: Mrs. Davis, one of the counsel indicated to me he can't hear you, so please use the microphones and talk to the gentlemen over here so we can all hear you. Your voice is very good and you—well.

A. I forgot where I was.

Q. You were on Senate.

A. Yes, I went up on Senate Ave. and they said I should be able to get Welfare because, you know, I was eligible for it and they don't know why they turned me down.

MR. GEDDES: Excuse me, I got lost here a little bit. I'm not clear as to who the witness was talking to just now.

THE COURT: On appeal, she has not identified any witness as yet. She went to file an appeal of the denial.

MR. GEORGE: Could counsel please——

Q. Do you know who you talked to by name or by position?

A. No, I don't, and I don't know if I could identify her or not.

Q. Did you ever see her after that?

A. No, I didn't.

[121] Q. What happened as a result of your going there to talk to them?

A. Well, I was going to wait for my hearing, and they sent me a letter and when I got it they told me to report on a certain date, and I don't remember the date, but I was sick, real sick that day and I couldn't come. They sent me a letter and told me to fill out why I wasn't there and I had already seen about getting a job, but I had the baby by then.

Q. Do you know when either of those dates might have been?

A. The first date was before June the 30th because I didn't have the baby, I was still pregnant. After I had had the baby, because I was due back to work, I had went for the job again and I was due back to work in about two weeks, I would say.

Q. Apparently sometime in the summer?

A. Yes.

Q. Now what month is it, July or August? Was that this year?

A. This year, everything was this year.

Q. Do you recall, let me ask you first how you went about making the appeal, did you have to file a paper or anything or did you just have to tell someone you wanted to appeal?

[122] A. When I went to Senate, I went up to the office and she filled out the form and I just signed them, I believe, then they gave me a written order I had filed for appeal and they would notify me of the hearing.

Q. Did they give you a copy of that paper you—they filled out for you?

A. Yes.

Q. Do you still have it?

A. I don't know, I'll have to go home and look.

Q. Have you looked for it?

A. I did, but you know, I threw away so many papers they gave me, everytime I got a letter saying they would let me know about this or that, then they would say I was denied, because of no six months separation, was all the

same reason, yet when I went down there to appeal they said I didn't have to wait six months.

Q. Now, at the hearing you attended after you were sick and couldn't go to the first one, what happened at the hearing, without saying what anybody said, what happened?

A. Well, they just said they reviewed my case and they saw no apparent distress, I remember them saying that and I don't see where they could have saw.

Q. Do you know who said that, you recall who said that?

A. I would recognize him, no I think it was a woman who [123] said that.

Q. Was there anybody here today that said that?

A. There's only one person I remember being there, he handled the whole thing, I saw him out in the hall.

Q. Could it be Mr. Freed?

A. Short man that wears glasses.

Q. Does he have white hair?

A. Yes.

Q. You don't know if his name is Mr. Freed or not?

A. No.

Q. Was he the hearing conductor, I mean did he run things?

A. Yes, he did most of the talking and introducing and all that.

Q. What did he say?

A. I can't remember what he said, the more I think about it I think the representative of the Welfare Department was a woman, I don't know her name, but she said something about no apparent distress, but nobody came to my house, I don't see how they saw no apparent distress because no one ever came to see me.

Q. Do you know who was at the hearing besides yourself and the white haired man who conducted it?

A. I think he was, I don't know his name either.

Q. Could you describe who you are pointing at?

A. The man in the gold shirt, the Negro man, right there, [124] him, yes.

MR. GEDDES: Let the record show she indicated Mr. McGruder.

Q. Do you know his name?

A. You said McGruder, I know just now.

Q. What did he do at the hearing, remember what he did at the hearing?

A. He just listened and wispered.

Q. To you?

A. No, to someone else.

Q. Did he testify at the hearing?

A. I don't remember.

Q. Do you remember anyone else testifying at the hearing?

A. Yes, and I don't know her name, it was a representative from the Welfare Department.

Q. Was it someone you had dealings with?

A. No, it was just the white haired man said she represented the Welfare Department.

Q. It wasn't anyone you had seen before?

A. I don't think so, I can't say for sure.

Q. Did you testify at the hearings?

A. I guess so, I talked, it was such a small room and we just talked, it didn't seem like a hearing.

Q. You remember what you said at the hearing?

A. I beg your pardon?

[125] Q. You recall what you said at the hearing, you yourself said?

A. They asked me questions just like you, and I told them everything, like I am saying now about my husband and about my situation at home and why I applied in the first place, all of that.

Q. What was that reason, what did you tell them?

A. Because I was helpless, I was hungry, I had been borrowing money, food, clothes, everything from everybody, just about that I knew and I just wanted help until I could get back to work, because I have always taken care of myself always, I never have asked for help from anybody else.

Q. Did you get a decision on the appeal?

A. Yes.

Q. What was the decision?

A. That I was denied of no apparent distress and no six months separation.

Q. Do you know when you got—how did you get word of the decision on the appeal?

A. Well, they told me in the hearing that their act was justified.

Q. Who told you that at the hearing, the man who ran the hearing or someone else?

A. I think the woman from the Welfare Department was

[126] reading all this about it being justified and the colored man, I don't know whether he said it was or not, I can't remember.

Q. Did you get any other words besides that at the hearing as far as a decision on your appeal?

A. No, by that time I was due back to work in a couple of weeks, it didn't make that much difference, I had borrowed so much money I had to pay back anyway and I was going to work in two weeks, I'm still trying to pay everybody back, of course I would not have half the bills I have now if they had helped me then because I have a 465 hospital bill, if they had given me some assistance I could have paid it back, my husband's back on his insurance on his Blue Cross, Blue Shield, but I don't know what's going to happen now, I've written them letters telling them about myself, seeing we can work out something, I can pay them back their back payments and then met them forget what I owe them.

Q. Without going into too much detail, what kind of debts did you run up during that period if time?

A. I have been buying my home since last August, August before last, and I have to borrow every cent to pay that because I wasn't working.

Q. You know how much you had to borrow?

[127] A. It was over $300.00, and then some people gave it to me and said I did not have to pay them back, I really appreciate, but one of these days I hope to pay them back.

Q. Do you mean you never got any written notice of the decision from the appeal?

A. Yes, I got a written notice after the hearing they sent me.

Q. How long afterwards?

A. I don't remember.

Q. Let's go back, you went to Senate Avenue and made your plea for an appeal, how much after that did you get an appeal, how long after that was the appeal scheduled?

A. I would say about a month, maybe a little longer, maybe a little less.

Q. How much after that did you get a written notice or decision, if you know?

A. I didn't get it until after I went to my hearing.

Q. How much after the hearing?

A. I don't know, I don't remember, it may have been a week or two, it wasn't too long.

Q. Did you take an appeal of that determination, you got word by written notice, did you appeal that determination any further?

[128] A. The second time.

Q. What do you mean the second time?

A. Are you talking about the appeal?

Q. Yes.

A. I thought if I appealed it once I did not know I could appeal it twice.

Q. Are you still separated from your husband?

A. Yes.

Q. Have you ever gotten any support from him?

A. No.

Q. Since he left?

A. No.

Q. Not a penny of support?

A. No, I don't think he supports himself.

Q. Does he work?

A. I doubt it.

Q. Do you know where he is?

A. No.

Q. Did you call the police on him or do anything to make him give you some money?

A. No, I just threatened him, I never wanted to see him again, I didn't want him at the house breaking out any windows and things, the only reason he has not been over there because I threatened him so bad he thinks I have a peace bond on him, he doesn't want [129] to go to jail, I know that.

Q. Have you tried to divorce your husband or has he tried to divorce you?

A. Well, he always says he wanted me to meet him downtown and get the divorce, he wants my name changed back to my old name and I told him this divorce would go through as soon as possible, he wants me to hurry up.

Q. Have you started a divorce action?

A. Yes, through legal aid, I didn't know I could get a divorce without paying for it because I didn't have any money.

Q. How did you find out?

A. Mrs. Smtih from the Trustee's office told me I could get a divorce.

Q. Did you ask her about it?

A. She asked me if I was divorced and I told her no and

she said why don't you get a divorce and maybe you can get aid to dependent children.

MR. GEDDES: Your Honor, we object, that is hearsay.

THE COURT: Sustained.

Q. So your action is on file in court?

A. Yes.

Q. But you are still not getting any support?

[130] A. No.

Q. Have you ever received anything from the Marion County Department of Public Welfare?

A. No.

MR. MANNING: I have no further questions.

Your witness.

CROSS EXAMINATION

Questions by MR. ROBERT GEDDES

Q. Mrs. Davis, to get this straight now, when did you and your husband separate?

A. It was around April.

Q. Of this year?

A. Yes.

Q. Is this your first separation?

A. Well, it's the first big one, we had been separated several times, 5 or 6, not, 5 or 6 times, but its not been over 4 or 5 days, I left him, I had to come back.

Q. Understand you and your husband have been separated before, is that right?

A. Yes.

Q. And do you have an attorney now?

A. Yes.

Q. Is that Mr. Klapper?

A. Yes.

[131] Q. Of Legal Services Organization?

A. Yes.

Q. When did you first go to Mr. Klapper?

A. It was after I went to the Trustee's office, I don't remember the date.

Q. So that would have been about—would that have been two weeks approximately after you and your husband separated?

A. I guess.

Q. As I understand it, the separation, you kicked your husband out of the house, is that right?

A. Yes.

Q. Did he, at any time, offer to give you any money?

A. I don't know how to answer that.

Q. Did he offer to give you $100.00 at any time to help you out?

A. Yes, he often did that, he does it a lot of times.

Q. When you went down to the Marion County Welfare Department, approximately two weeks after you separated, you were not denied the right to file an application were you?

A. I was told to go up to the trustee's office because I had not been separated for six months, this was over the telephone.

Q. When you went downstairs in the Welfare Department [132] though you filed an application, I believe?

A. Not the first time, they told me to go up to the Trustee's office.

Q. When you went back downstairs?

A. When I went—the Trustee sent me back down there.

Q. That was approximately two weeks after you and your husband separated?

A. I guess, everything was all happening at the same time.

Q. It was a relatively short time, period of time, was it not?

A. Yes, it was short.

Q. At that time did you go to Mr. Klapper?

A. I went after I went to the Trustee's office.

Q. When did you file for legal separation?

A. After I went to the Trustee's office, because I did not know I could do it until Mrs. Smith told me.

Q. What month was that, do you know?

A. It was April or May, I don't remember.

Q. This was after you filed your application?

A. It was after I filed.

Q. In other words you filed your application for Welfare benefits and you went and filed for legal separation afterwards?

[133] A. That was after I filed for, that was after I left the Trustee's office.

Q. When you went to the Trustee's office did you receive any benefits from the Trustee?

A. Yes.

Q. What did you receive?

A. I received 15 dollars a week for food and shortly after that they said they would start paying my disconnection, if I got one.

THE COURT: Paying your what?

THE WITNESS: Disconnect bills, utility bills.

Q. Were you living in your own home at that time?

A. Yes.

Q. Was this a home you were buying?

A. Yes.

Q. Was anybody else living with you besides your children?

A. Then?

Q. Yes.

A. No, I mean no not at first, then my sister moved in with me.

Q. When did your sister move in with you?

A. It was around June or July, I would say.

Q. How old is your sister?

[134] A. She is 20, well she's 21 now.

Q. Is she working?

A. Yes.

Q. Was she working after she moved in with you?

A. Yes.

Q. Did she help pay you anything for the rent?

A. Yes, she gave me $40.00 a month.

Q. Are you presently working, Mrs. Davis?

A. Yes.

Q. How long have you worked at your present employment?

A. I went back to work September the 21st, I went back to class, I got out of class October the, I think it was the 13th.

Q. And this is at the hospital?

A. Yes.

Q. Where did you work prior to your time at the hospital?

A. I worked at the hospital before that, I took off when I got married, and then after that I got pregnant.

Q. During the year 1970 did you work anyplace other than the hospital?

A. No.

Q. Did you receive any income from any other sources other than the hospital?

A. No.

Q. Did you have any part time jobs of any kind?

[135] A. I did baby sit, I think it was around May up to about two weeks before I started working this year.

Q. As I understand it, when you appealed the decision by the Marion County Welfare Department—strike that, please. I understand, Mrs. Davis when your application for assistance was denied, that is, assistance was denied you were well aware of the fact you could appeal this, isn't that correct?

A. When it was denied?

Q. Yes.

A. Yes, it was stated in the letter.

Q. In the letter you received?

A. Yes.

Q. Did I understand you did appeal to the Marion County Welfare or to the State after the decision?

A. Yes.

Q. What did you do, just write a letter?

A. No, I went up to the office.

Q. You spoke to somebody?

A. No, I sat down, she filled out a form, I signed it, then she gave me a typewritten letter saying I filed an appeal and then she said I would be notified when my hearing would come up.

Q. As I understand it, you were notified, but at the time of the hearing you were sick and could not appear?

[136] A. Yes.

Q. When you appeared for the appeal, where was that, in the City County Building?

A. Yes.

Q. When that decision of appeal, when you were aware of that decision, did you appeal that decision?

A. No, I didn't know I could, and besides I was going to work in a couple of weeks.

Q. Did you receive any letter at that time you could appeal?

A. I don't believe so, I received a letter saying I was denied again, but I don't remember when I saw the denial, I don't think I read it all, I don't know whether it said

I could appeal again or not, I had to go to work so it didn't make any difference.

Q. Mrs. Davis, I hand you what has been marked for identification purpose as defendant Exhibit A, which is a letter, can you identify that letter?

A. I don't know.

Q. Will you read it?

A. I haven't got my glasses and I can't read it very well, I lost my glasses.

Q. Do you have your glasses with you?

A. No, I lost them, I have to get more. I could read a little of it, but my eyes blur up and I can't read [137] very much any more.

Q. After the appeal, and there was a decision against you, you remember receiving a letter at that time?

A. Yes, I did, I received a letter, but not like that, it was kind of thick, it had more pages.

Q. Yes, that's correct, this would just be the cover letter. Were you living at 3210 Ralston Avenue at that time?

A. Yes.

Q. Mrs. Davis, can you read this or is it too difficult without your glasses?

MR. MANNING: Excuse me, counsel.

MR. GEDDES: I'm just asking her to identify it.

A. I got so many letters, I can't identify it for sure, I can't identify this for sure.

Q. Would you like to read it first?

A. Ok. Attached——

Q. No, just read it to yourself.

MR. MANNING: Counsel, why don't you read it for her?

MR. GEDDES: I will read it for her.

THE COURT: You understand if he reads it will be read in the record.

MR. MANNING: Yes.

[138] Q. This is dated September 29, 1970, State of Indiana, Department of Public Welfare, it is addressed to Mrs. Tony Marie Davis, 3270 Ralston Avenue, Indianapolis, Indiana, 46218, Dear Mrs. Davis. And it's got to the side, C-49-24016. Attached is a copy of the finding of fact and decision on the appeal hearing, which was held on August 27, 1970. If you are not satisfied with the decision you have the right to request a review by the State Board of Public

Welfare. This request for a Board review must be made in the State Department of Public Welfare within 10 days following your receipt of the decision on your appeal. If we can ever be of further service or assistance please do not hestitate to contact us, Very Truly your, Robert O. Brown, Director, Division of Public Assistance, showing a copy to Mr. Wayne H. Stanton, Director, Marion County Welfare Department. Do you remember receiving this letter, Mrs Davis, with some other papers?

A. No, I don't remember, I can't say for sure that I remember because I don't.

Q. Let me say this. You know after the decision by the Welfare Department—strike that. Do you know this, Mrs. Davis, that when you appealed and you were denied benefits you had the right to take this to the [139] State Department of Public Welfare, do you know that?

A. I don't remember that, I didn't know that.

Q. Were you still going to Mr. Klapper at that time?

A. I called, you know, to ask if things were moving along, when would I be ready for my divorce and I think there was 60 ahead of me.

Q. Did Mr. Klapper know your appeal was denied?

A. I didn't tell him any of this, I just thought he was handling my divorce.

Q. As I understand it, you filed for divorce because you wanted to divorce your husband, is that right?

A. Yes.

Q. It had nothing to do with your receiving any welfare benefits?

A. No.

Mr. Geddes: No further questions, Your Honor.

Mr. Curry: No questions.

Mr. Manning: No further questions. I would request at this time that David Freed who is hearing examiner for the State Department of Public Welfare come in because I believe he is the man Mrs. Davis referred to. In fact, I'm pretty sure he is. I saw him standing outdoors, I believe he could come in now and she [140] could identify him.

Mr. Geddes: For identification, yes, Your Honor.

The Court: In the mean time, Mrs. Davis, if I understood your testimony properly, you said you received two letters from the Welfare Department, one when your original application was denied and later when your appeal relief was

denied, letters in which you said you had not been separated or divorced from your husband for a period of six months, is that correct?

THE WITNESS: Yes, that's correct.

THE COURT: You received two such letters did you?

THE WITNESS: The first letter I received was a printed letter, it had about six different reasons and one of them was checked and that's what it said, because of no six months separation, and the second one was the hearing, and it was just written down at the end of the hearing.

THE COURT: And you have neither one of these letters in your possession?

THE WITNESS: No, I don't have either with me, I could go home and check, I don't [141] know if I threw them away or not.

THE COURT: Do you see anyone in this Court?

THE WITNESS: Yes.

THE COURT: Will you point him out to you?

THE WITNESS: (Indicating)

THE COURT: Would you identify——

MR. GEDDES: Would you identify yourself.

MR. FREED: Department of Public Welfare.

MR. MANNING: I would ask if Mr. Curry is calling Mr. Freed as a witness.

MR. CURRY: Yes, Mr. Freed will be called.

THE COURT: If you have no further questions of Mrs. Davis, she may be, you may be excused.

(Witness excused.)

MR. SHADEL: May it please the Court, at this time I would like to request that the witness who testified immediately before Tony Davis, Mrs. Jean Luke, be permitted to identify the worker whom she had allegedly had a conversation with at the Department of Public Welfare, in the City County Building, and whom she states is outside.

THE COURT: Very well. Would youl have [142] Mrs. Luke come in with the individual she identified?

JEAN LUKE, having been previously sworn, testified as follows:

RE-DIRECT EXAMINATION

Questions by MR. SHADEL

Q. Please state your name?

A. Jean Luke

Q. You earlier testified in this matter as to certain conversation you had with an employee in the Marion County Department of Public Welfare?

A. Yes.

Q. Do you recognize that person in the courtroom now?

A. Yes.

Q. Could you point that person out, please?

A. (Indicating)

MR. SHADEL: Could counsel for that person please identify herself?

MR. GEDDES: Would you please identify yourself.

LOIS HARTZLER: I'm Lois Hartzler, I am a case worker for the Marion County Welfare Department.

MR. SHADEL: I would like at this time to ask defendants counsel whether he intends to call Mrs. Hartzler as a witness?

[143] MR. GEDDES: I plan, yes.

THE COURT: I don't really know the reason you ask these questions, I think they have the right to call witnesses if they desire, I have never quite seen this procedure before maybe it is something new since I left the trial bench.

MR. GEDDES: I don't want to guarantee I'm going to call a certain witness, Your Honor.

THE COURT: If he does call you have a right to subpoena on rebuttal, but you can work this out among yourselves, I don't think you should be placing them on the spot, so to speak. I like to give a fair trial to both sides.

* * * * *

[147] SUSAN BOWMAN, a witness called by plaintiffs, having been first duly sworn testified as follows:

DIRECT EXAMINATION

Questions by MR. SHADEL

Q. State your name.

A. Susan Bowman.

Q. Where do you live?

A. 644 South Boyton.

Q. Indianapolis, Indiana?

A. Yes.

Q. Are you a married lady?

A. Yes, I am.

Q. Are you living with your husband now?

A. No, I'm not.

Q. Are you separated?

A. Yes.

Q. How long have you been separated?

A. About a year ago now, since around November 22, '69.

Q. In your complaint in this cause you alleged that you and your husband separated on or about November 12, 1969, is that substantially correct?

A. Yes.

Q. At that time how many children did you have?

A. I had one and I was expecting another one, I was about six months pregnant then.

[148] Q. Have you ever had any contact with the Marion County Department of Public Welfare?

A. Yes.

Q. About when was your first contact with them?

A. Around the end of November or first of December.

Q. In your complaint you allege it was on or about December 1st, 1969, is that substantially correct?

A. Yes.

Q. How did this contact come about?

A. How did you do——

Q. How did you do?

A. Well, my husband left me and I went down to the township trustee's and, well I spoke to them and then they told me to fill out an application with the Marion County Welfare Department.

Q. When did you first go to the Marion County Department of Public Welfare, was that on or about December 1st, 1969?

A. Yes.

Q. Where did you go?

A. It was at the City County Building here in Indianapolis, it was not on the first floor like it is now, I'm not sure where it was, between 14, 22 someplace in there, I think.

Q. Did you fill out an application for welfare at the [149] Marion County Department of Public Welfare?

A. Yes.

Q. Did you have a conversation with anyone at that time?

A. The receptionist first and I told them I wanted to make out an application and she gave me one and after I filled it out I spoke with another woman there.

Q. Who was that other woman?
A. I don't know her by name.
Q. Would you recognize her by sight?
A. Yes, but I haven't seen her.
Q. This is at the intake department?
A. Yes.
Q. What did you and this, did you have a conversation with this second woman?
A. Yes.
Q. What did this conversation consist of?

Mr. Geddes: Your Honor, we make the same objection, subject to the same conditions.

The Court: Yes, I will sustain the objection unless the person with whom she spoke can be identified.

Mr. Shadel: At this time I would like to point out to the court and defendant counsel [150] that defendants have in their possession and are required to keep by law memoranda of any initial request for welfare. Defendants have in their possession, have the statements and identity of the person with whom plaintiff Susan Bowman spoke with at that time. We have requested——

The Court: Have you requested information?

Mr. Shadel: We have requested the information, defendant counsel have refused to supply us with this information.

Mr. Geddes: Your Honor, I don't think he requested that information.

Mr. Shadel: We requested all the information in the file, that information is in the file, as I understand.

Mr. Geddes: You did not request any information as to case workers involved in any case with the names or anything like that.

Mr. Shadel: We requested any and all information pertaining to application involved, documents of named people and certain depositions who were taken. That file would contain information stating the identity of the worker with whom Mrs. Bowman had this conversation.

The Court: Nevertheless, we will allow the [151] testimony to go in subject to further objections.

Q. This conversation you had on that date, what did it consist of, what did you say and what did she say?
A. Well, of course, we went, she went through the ap-

plication with me and she told me then that I wasn't separated for six months period and I would not be eligible for welfare, and that's really all she said.

Q. In your complaint you alleged that she told you that—strike that. In your complaint you stated that you were denied ADC until either you filed for divorce or legal separation or until you remain separated for six months, is that true?

A. Yes.

Q. This conversation consisted of you both stated you should file for legal separation or divorce or you shuld remain separated for six months in order to get welfare?

A. Yes.

Q. At the time you filled out that application were you receiving any assistance from any other agency?

A. I was receiving a 15 dollar grocery money, not money order, grocery order from Center Township Trustee.

Q. Were you receiving any other assistance from the Township Trustee?

[152] A. No, nothing other than the grocery order itself, nothing else.

Q. Did you have, at that time, did you have any family needs which you did not have monies to meet?

A. Yes, quite a few.

Q. What were some of them?

A. Well, of course, clothes, Missy.

Q. Who's Missy?

A. She's my 18 month old daughter, my other one was not born at that time, I did not have any warm clothes for her at all, and it was winter then, and well, when I first talked to the Trustee's office, I did not have a place to stay, I had 30 cents in my pocket and a half bottle of milk, they made arrangements with the Salvation Army for me to stay there for a weekend, that's really all, they managed to talk to my folks and let me stay there for two weeks, it was all supposed to be, it ended up in six months. When I spoke to them later they told me their office does not make arrangements for providing for another means of living.

Mr. Geddes: We would move that answer be stricken on the basis it is surely hearsay and no identification to any of the parties involved.

The Court: I don't see how it would help [153] determine or help anyone.

MR. GEDDES: I couldn't hear it all.

THE COURT: She said she stayed at the Salvation Army for a period.

Q. At the time you applied for welfare and had this conversation with the worker there, where were you staying then?

A. The Welfare worker?

Q. Yes, on or about December 1st, where were you staying?

A. On December 1st I had just gotten out of the Salvation Army and they made arrangements for me to stay with my folks, not the Welfare but——

Q. Did you have any income at that time from any source?

A. No.

Q. Did you have monies to find a place of your own to stay with you and your child?

A. No, this was my problem and anyway they made arrangements for me to stay with my folks, their address was 321 North Walnut, at the time, and let's see, I believe it was a week later when I started getting the grocery order, the $15.00 from the Trustee's office and really that's all I received, no one mentioned any thing as far as insurance for me, I didn't know exactly what I was going to be doing as far as any medication or [154] even if I was going to the hospital.

Q. Have you ever received any public assistance from the Marion County Department of Public Welfare?

A. I got my first welfare check the first of June of this year, '70.

Q. After you filled out the first application, did you ever make another application?

A. Yes.

Q. When was that?

A. I believe it was in March, if I remember right, March, I'm not sure when in March.

Q. As a result of that application did you begin to receive welfare in June?

A. Not of that one.

Q. What happened as a result of that second application?

A. I received notice in the mail saying I was denied on the grounds of insufficient separation for six months.

THE COURT: I though that was what happened when you applied the first time.

THE WITNESS: Yes, it happened twice.

Q. Did you ever fill out a third application?

A. Yes.

Q. When was that?

A. It was the next month, April, when Nancy was born.

[155] Q. What happened as a result of that application?

A. I got the same notice for insufficient separation for six months.

Q. During this time did a welfare worker ever come out to your home?

A. No.

Q. Did you make another application for welfare?

A. Yes, it was the first of May when my six months was up and I went down and reapplied and after I finished my application I handed it to her to another woman, it wasn't the same person as I handed the first two to, but as soon as I handed it to her and she realized my six months was up she told me I would receive $125.00 benefits from medicare. I'm sorry, from Welfare.

THE COURT: Do I understand you made four applications before you got help and assistance?

THE WITNESS: That's right.

THE COURT: From the County Welfare?

THE WITNESS: That's right.

Q. During the period from the time you made your first application to the time you finally began to receive assistance from the Marion County Department of Public Welfare, had your needs changed, the needs of [156] yourself and your family?

A. Well, of course, when Nancy, when she was born, her additional needs were needed and needed bed clothes and extra food, you know, formula, and stuff like that for her and of course I was still getting the grocery order, but it did not cover my staying, there was mom, and covering Missy's needs, my needs and Nancy's also, I did have to take her back for a checkup at the hospital and really that then my mom thought maybe if she could get me out of her house, which I wanted to do to start with, if she could get me out of the house, maybe I could get help.

MR. GEDDES: We're objecting to conversations on the ground of hearsay.

THE COURT: Sustained, as to what the conversation with the mother and Mrs. Bowman,

MR. SHADEL: I have no further questions.

THE COURT: How old are you?

THE WITNESS: 21.

THE COURT: Where is your husband now?

THE WITNESS: He's here in town now, he was in Kentucky up until about three or four weeks ago.

THE COURT: What is he doing to help your subsistence?

[157] THE WITNESS: Very little.

THE COURT: What is he doing?

THE WITNESS: Well, if I'm lucky I might get $20.00 a month out of him. I haven't got anything this week, but the week before he gave me $4.00.

THE COURT: He is working?

THE WITNESS: Yes, he is.

THE COURT: Where?

THE WITNESS: He's working at, it's called, it's a Shell station on, at 8900 something, East Washington, as a mechanic now.

THE COURT: Have you filed any action for support for yourself and your children?

THE WITNESS: Yes, I did, out at the juvenile center, on East Keystone, Keystone, anyway.

THE COURT: What did you file, for child support?

THE WITNESS: Yes, child support for Malisa, she was the one that was born at the time; I couldn't get support for my youngest because she wasn't born yet, and they ordered him to pay $25.00 a week then.

[158] CROSS EXAMINATION

Questions by MR. ROBERT GEDDES

Q. Mrs. Bowman, when did you say you and your husband separated?

A. From the end of November—well it was the end of November.

Q. When, end of November, 1969?

A. Yes.

Q. Was that the first time you and your husband ever separated?

A. Well we had separated two days before that.

Q. Then you got back together?

A. Yes, Charles walked out on me, let's say, three days before that, we got back together the next day and then he walked out on me two days later.

Q. After you separated did you and your husband ever get back together again?

A. No, we haven't.

Q. Did he ever come to the house?

A. He came a couple times to give some money towards the kids and he stayed for a short period of time to see the kids and left again, I wouldn't let him go outside the house with the kids.

Q. Do I understand he did come back to the house after November to give money for the children?

[159] A. A few times.

Q. Then he stayed at the house some of those occasions?

A. For a short period of time to see the kids, not over an hour's time.

Q. Was he leaving any of his clothes there or anything?

A. No.

Q. As I understand it, when you went to apply for welfare for the first time, you were living with your mother, is that right?

A. No, I had—let's see. Charles and I had been at his Uncle's house on Churchman Avenue, 1010, address was, and he walked out on me two days later and from there I went up to the Trustee's office, after I saw them then they placed me in the Salvation Army.

Q. So to get this straight then, as I understand you and your husband had been separated for a few days in November, then you got back together again and then was separated again?

A. We were separated before that, got back together for two days, then he walked out.

Q. That was the end of November?

A. I don't know exactly when in November it was, it was between the middle and end, I can't say what the date was for positive.

Q. Then you say you applied for Welfare benefits the first [160] of December, 1969?

A. Yes.

Q. How long had you been separated when you first applied?

A. About a week, because I applied the first time after I had been at the Salvation Army for that week.

Q. That was denied, as I understand?

A. That's right.

Q. Did you have a lawyer at any time—let me put it this way. Do you have a lawyer now?

A. You mean in this case?

Q. No, have you filed for divorce?

A. Oh, yes, Charles Dieter.

Q. Is he connected with Legal Services Organization?

A. Yes.

Q. When did you go to Mr. Dieter?

A. Mr. Dieter wasn't the one I saw first. I saw a Mr. Baratz first and——

Q. Is he with Legal Service?

A. Yes, he was, I don't know if he still is or not, but I saw him then and asked about filing for the divorce then.

Q. When did you first go to him?

A. Mr. Baratz?

Q. Yes.

A. It was the day I applied for welfare.

[161] Q. The day before, day after or that day?

A. That day.

Q. The welfare——

A. Or else it was the day the Trustee told me to go, you know, made arrangements for me to be at Salvation Army, I'm not sure when it was.

Q. You were never denied the right to file any application were you?

A. No, but there was one time when I went down, I had gone to the Trustee's office for some reason, I can't remember.

Q. I'm talking about the Welfare Department.

A. Yes, I'm getting to that. I went to the Trustee's office for something and they told me there is a new manager, something like that, she said go to the Welfare Department and makes out another application, I told them I just done it a week before or a month before and she said well, go down anyway, so I went down there and told them I had to fill out another application and advise, I couldn't

say who it was, sitting at the desk, anyway, told me, he said, well, here is an application, he just took a slip of paper, wrote on it "insufficient separation for six months" and paper clipped it and told me to take it back up to the woman upstairs.

[162] Q. Was this a person from the Welfare Department?

A. I believe so, he was down in their anyway on the first floor at the time.

Q. Do you know his name?

A. No.

Q. Can you identify him?

A. No, I only saw him one time.

Q. When your application was denied you remember receiving that form which told you you could appeal the decision?

A. No, because I never filled out the application.

Q. No, what I mean when you filed an application and assistance was denied, you remember receiving that form?

A. Yes.

Q. Where it says in there you could appeal it?

A. Yes.

Q. Did you take any appeal?

A. No, because at the time I didn't realize it was a denial. All I know it was a substantial reason for me.

Q. Let me say, at that time you had this Legal Service Organization lawyer, did you not?

A. Yes.

Q. And you knew you could appeal the decision?

[163] A. They stated on the form you could, but I didn't know any way of going about it.

Q. But you read the form?

A. Yes.

Q. But you did not appeal, is that correct?

A. No, I didn't know how to start to go about it.

Q. But you had a lawyer, Mr. Dieter?

A. Well, Mr. Dieter was my lawyer at that time, Mr. Baratz, I only saw for the one day.

Q. May I ask you this, this lawsuit was file February, 1970, who was the lawyer you went to that filed this this lawsuit?

A. Mr. Shadel.

Q. Did you go to him?

A. No, let's see. Yes, I had already stated to Mr. Dieter at this time, Mr. Shadel, I received a letter in the mail saying something about my welfare case, and I figured then maybe I can get something done through this, you know, through Mr. Shadel, seeing as how it did have something to do with this.

Q. Did you contact Mr. Shadel or did he contact you?

A. After I received the letter I contacted him.

Q. You——

MR. SHADEL: I object to this testimony as immaterial and irrelevant, and no issue raised [164] on direct examination and attorney and client relation.

THE COURT: Overruled.

Q. Mrs. Bowman, did you go to Mr. Shadel then to file this lawsuit?

A. To see what I could do about this, yes, to see if I could get my welfare earlier.

Q. Did they at any time, Mr. Shadel, tell you of your rights to appeal?

A. This is what I considered it to be.

Q. Did they at any time tell you of your rights to appeal to the Marion County or State Department of Public Welfare?

A. I don't exactly know what you mean by that, because what I understood what I was doing when I went to see him was trying to appeal this.

Q. You filed a lawsuit as one of the plaintiffs, did one of the lawyers over in Legal Services Organization write a letter for you or take you over to the State Department of Welfare or the Marion County Department of Public Welfare and say look, we want to appeal this decision or any of these decisions?

A. No, he never took me anywhere.

Q. Did he write a letter in your behalf to appeal the decision?

[165] A. I don't know.

Q. Did he tell you in any way you could appeal the decision?

A. This is what I thought he was doing is trying to get this appeal.

Q. But they didn't appeal anything with the State Department of Welfare for you, did they?

A. This is what I thought they were doing, this is what I thought this is, right now, this is what we are filing for in February, it just happened to take a little longer than what was expected.

Q. Did you go to Mr. Shadel and say you wanted to appeal the decision or did he contact you?

A. When I received the letter, it said on it, Mrs. Bowman, and I can't quote it exactly because I don't remember exactly what it did say, but it said something about please contact me in reference to your welfare case and so when I called him, I can't remember if I called him or I went to see him, but anyway we discussed my not being able to get welfare and how I needed it, and he said something about trying to get it into court.

Q. You discussed this with Mr. Shadel?

A. Yes.

MR. SHADEL: I object to this line of [166] questioning, as being within attorney-client relationship and immaterial to any issue raised in this lawsuit or on direct examination.

THE COURT: You raised the same objection before and I overruled it, and it is still overruled. If we get into any confidential relationship discussions between you and the client I would rule otherwise.

Q. But Mrs. Bowman, I want to make absolutely sure here, this is for the record—as I understand it, Mrs. Bowman, for the record, you are a party plaintiff in this lawsuit, are you not?

A. Yes.

Q. When the Welfare Department denied you assistance on your first or second application you did not appeal that to the State Department of Public Welfare?

A. Let me say this, I myself did not know how to go about this. Now, I know what I'm going to say is going to be objected to, but it has got something to do with State Welfare Board.

THE COURT: As I recall Mrs. Bowman's testimony to be, she stated she didn't know how to go about it, which I think you're trying to get it again, I'd be just as impressed the [167] first time as I would the second. It's clear in my mind she said she didn't know how to go about it.

Q. I understand you did not know how to go about it, that is when you went to your lawyer?

A. That's right.
Q. For that purpose?
A. I went to Shadel?
Q. Yes.
A. Yes.
Q. To appeal the decision?
A. To talk about, to see how we could do it, yes.
Q. Now, isn't it true also, Mrs. Bowman, that after you had filed your second application that you advised the case worker that you were planning on reuniting with your husband?
A. No, sir.
Q. Was there any indication that you and your husband might get back together again?
A. No.
Q. Did you and your husband talk about it?
A. About two days after he left me again he did.
Q. About getting back with you?
A. He did.
Q. Is he employed?
[168] A. Yes, he is now.
Q. Where is he employed?
A. As I said, at Shell Station on East Washington, it's Elliott's Shell Station on East Washington, 8900 something.
Q. Are you receiving support payments from your husband?
A. No, you can't even call them support payments. As I said, I didn't get anything last week, and week before I got $4.00 from him, before that I hadn't gotten any for several months.
Q. Did your attorney file a pleading with the Court to have the Court order your husband to make support payments?
A. My attorney?
Q. Yes.
A. No, I had gone to the Juvenile Center, I can't even remember when it was, last year sometime, it was after I had my welfare.
Q. Did you file for divorce?
A. I did file for, I didn't file for divorce until August.
Q. Of this year?
A. Yes.
Q. Did you also file something requesting the Court to order your husband to pay support payments?

A. Out at the Juvenile Center I did.

Q. At the Court?

[169] A. We haven't been in court yet, we are planning on this, but we haven't been in court, we won't be in court for support hearing until the 4th of December.

Q. Has there been any support payments given by your husband?

A. The day he was ordered to pay support he gave me $30.00, after that I think every other two weeks for the first month he might have given me 10 or 15 dollars, since then it's been very wide spread and it has been 5 to 10 dollars each time.

Q. Are you working, Mrs. Bowman?

A. Yes, I am.

Q. How much do you receive a week?

A. I can't say a week but I make a $152.00 every two weeks.

Q. Where are you working?

A. Blue Cross Blue Shield.

Q. How long have you been working there?

A. It will be three months about two days ago, the 20th.

Q. Are you also receiving some payments from the Welfare Department?

A. Yes, I am.

Q. How much is that at the present time?

A. $125.00 a month.

Q. As I understand then, you are receiving welfare payments [170] and employment checks from Blue Cross Blue Shield?

A. Yes.

Q. Have you had any other type of jobs other than Blue Cross Blue Shield?

A. Before I got pregnant with my last child I worked three months at White Castle on East Washington.

Q. Have you had any special training of any kind?

A. No, I just graduated from High School, I did not major in any special subject.

Q. Have you learned how to operate any machines, adding machines?

A. No, just talk on the telephone.

THE COURT: You don't need much training for that?

THE WITNESS: No.

Q. I understand you filed for an application the first part of May, 1970, is that right?

A. Somewhere around there, yes.

Q. And that was less than six months after you were separated, isn't that right?

A. Less than six months? No—wait a minute. No, it should be right around exactly six months.

Q. Didn't you separate about the end of November, '69?

A. Middle or end.

Q. And the application was the first part of May, 1970?

[171] A. Somewhere around there, I don't know, it was the first part or the middle, I can't remember which one it was.

Q. Then I understand you started receiving benefits June 1st?

A. The first of June, because they considered my six months being complete.

Q. Did you receive any benefits from the Township Trustee?

A. Just the $15.00 grocery order up until, let's see, when was that, up until I got my welfare.

Q. From that time then did the Township Trustee cut off your payments, after you started receiving welfare?

A. Yes.

Q. During this entire period, as I understand your testimony then, you had the services of attorneys from Legal Services Organization, is that right?

A. That's right.

Q. And I understand also part of this time you lived with your parents, is that right?

A. Practically the full six months time.

Q. You were with your parents?

A. That's right.

THE COURT: What does your father do?

THE WITNESS: My dad is what you call a [172] switchman operator at Indiana Bell. My mom works at Blue Cross Blue Shield, she's a switchboard operator.

THE COURT: She works there?

THE WITNESS: Yes.

THE COURT: Do you know what their combined income is?

THE WITNESS: Not now, I don't even remember what it was then. Let's see, I can't even guess what it was then, I can't remember that far back, I don't know what they are making now, either. We very seldom talk about it.

THE COURT: How many other children are there of you in the family?

THE WITNESS: I have a twin sister and three brothers.

THE COURT: Are they residing at home?

THE WITNESS: One brother is in Texas, the other two brothers and my sister are still at home.

THE COURT: At the time your application was rejected did you ever have anything in writing from the Welfare, you did indicate once you got something pencil written you took [173] upstairs to the Township Trustee.

THE WITNESS: Yes, that was attached to the——

THE COURT: Other than that, was there anything in writing?

THE WITNESS: Sent through the mail was a yellow slip of paper saying I was denied.

THE COURT: Any reason?

THE WITNESS: Insufficient marriage.

THE COURT: Where is that paper?

THE WITNESS: I never kept any of my papers, just my billfold, I didn't realize you would be doing this at the time, but I know they have it, because they showed it to me.

MR. GENOES: I have no further questions.

MR. CURRY: No questions at this time, Your Honor.

MR. SHADEL: I have no further questions.

THE COURT: You may be excused.

(Witness excused)

* * * * * *

[176] LAVERNE CARTER, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. DAVID SHADEL

Q. Please state your name to the court.

A. Laverne Carter.

Q. Where do you live?

A. 1514 Kappex.

Q. In Indianapolis, Indiana?

A. Indianapolis, Indiana.

Q. Are you a married lady?

A. Yes, sir.

Q. Have you ever had any contacts—strike that. Do you have any children?

A. I have six, one of them is at home now.

Q. Have you ever had any contact with the Marion County

A. Yes, sir.

Q. Approximately when did you and your husband separate?

A. It was about the 24th of October.

Q. What year?

A. 1969.

Q. When did you have your first contact approximately with the Marion County Department of Public Welfare?

A. I think it was just before Christmas or just after Christmas, 1969.

Q. What happened at that time?

A. Well, I went down, made out an application to the Welfare and they said they would send a worker out to the house, which they did.

Q. Do you know the name of this worker?

A. No, sir, I don't.

Q. Might you be able to recognize her again if you would see her?

A. I doubt it, it has been too long ago.

Q. As a result of this application for Welfare, did you receive any public assistance?

A. No, sir.

Q. Did you receive any kind of a letter indicating that your application had been accepted or denied?

A. I received a yellow paper saying it had been denied [178] because my husband had not been out of the house for six months.

Q. Do you have the paper with you?

A. Yes, sir.

Q. Might I see it, please. I would like to show you a piece of paper marked plaintiffs exhibit 1, is this the piece of paper which you received from the Welfare Department at that time?

A. Yes, sir.

MR. SHADEL: I would like to offer to counsel for the defendants for their inspection.

MR. GEDDES: Your Honor, we have no objections to the admissibility of plaintiff's exhibit No. 1.

THE COURT: It may be received.

Q. Referring to this exhibit, would you please state the reason that you are, your application was denied?

A. It says, no six months separation.

Q. What is the date of this?

A. January 20th, 1970.

Q. As of the time that you filled out the application form and the time the worker came to your house to talk with you, had you been separated from your • • •

[179] A. Yes, we separated October 24th.

Q. What were your intentions as regarding your marital life, did you plan to go back together?

A. No, I didn't, I had went up to Legal Services in November and signed papers for a divorce.

Q. Did you tell the worker this when she came to your home?

A. Yes, sir.

Q. You did fully apprise the worker of the fact you and your husband were separated and you had been to an attorney in order to file for divorce?

A. Yes.

Q. At this time did you have any income?

A. No, we were getting trustee help.

Q. What help was that?

A. $16.00 a week grocery order and 100 gal. a month oil.

Q. That was every month of oil?

A. Yes, sir.

Q. At this time, how many children were in your custody?

A. Three.

Q. What were their ages?

A. 9, 15 and 17.

Q. As of the time you went down to apply for welfare and fill out the application, were all of your children [180] in good health?

A. No, my 17 year old boy had fallen out of a tree and had fractured his foot.

Q. How long was he disabled?

A. Approximately 6 weeks.

Q. What was the status of your rent payments at the time you applied for welfare?

A. We were way behind.

Q. What was the status of your utilities?

A. They were approximately two months behind.

Q. Did you have any other family needs for which you did not have income to meet at that time?

A. Well, the children needed winter clothes. I had to have groceries, and oil and utilities.

Q. Did your husband ever return to you?

A. He did, I think it was about the first of March.

Q. From the time your husband separated—strike that please. At the time you went to fill out your application form, did you know where your husband was, at that time?

A. No, I did not.

Q. Have you heard from your husband since the date he left you—strike that please. As of the time you went down to fill out the application form, you didn't know where your husband was then, had you [181] heard from him since he had left you at that time?

A. I had, he stopped out one day about two days before Thanksgiving and gave my little son a $20.00 money order, that is all I heard from him.

Q. Did he ever pay you any other kind of support while you were separated?

A. No.

Q. When was the next time you saw or heard from him?

A. In February.

Q. Of 1970?

A. 1970.

Q. So approximately three months elapsed between which time you neither heard from him or saw him?

A. That's correct.

MR. SHADEL: I have no further questions.

CROSS EXAMINATION

Questions by MR. ROBERT GEDOS

Q. Mrs. Carter, you say you and your husband separated in October, 1969?

A. Yes, sir.

Q. And are you and your husband still separated?

A. No, sir.

Q. When did you go back together again?

A. About the first of March.

Q. Of 1969?

[182] A. 1970.

Q. 1970. When did you go down to the Welfare Department and fill out the application?

A. I think it was, it was right around Christmas.

Q. Around Christmas?

A. Yes, sir.

Q. You did not have any trouble filing the application, did you?

A. No, sir, I did not.

Q. And you filed an application for Welfare benefits, did you have a lawyer at that time?

A. No, I didn't.

Q. Did you go to a lawyer later on?

A. No, the only time I went to a lawyer was when I went to the Legal Service to file for divorce in November.

Q. Of '69?

A. Yes, sir.

Q. Did you file for divorce then?

A. Yes, sir.

Q. And then I understand you hired the attorney or went to the attorneys in this case to file this lawsuit, is that correct?

A. Yes, sir.

Q. Now, Mrs. Carter, I understand this plaintiffs [183] Exhibit No. 1, did you receive this on or about January 20, 1970?

A. Well just about there, that is the date on it, January 20th.

Q. And at that time you had the legal services of the Legal Service Organization attorneys?

A. Yes, sir.

Q. Who was your attorney?

A. Mr. Shadel.

Q. Did Mr. Shadel explain to you that on the other side of this form it has written in there, your rights to appeal and to have a fair hearing?

A. No, he didn't, but I read it.

Q. Did you read this?

A. Yes, sir.

Q. Did you understand there, of your rights to appeal?

A. Yes, sir.

MR. MANNING: We object to that, to the form of the question, whether she understood it or not.

THE COURT: She did say she did read it.

Q. Did you, in fact, Mrs. Carter, file any appeal with respect to the denial of you receiving assistance?

A. No, sir.

[184] Q. Did Mr. Shadel file any appeal in your behalf, that you know of?

A. I went to him and he said he was going to pursue something, but he didn't file any plea, appeal.

Q. He said he was going to sue, but he did not say he was going to file an appeal, did he?

A. No, he didn't.

Q. As I understand it, Mrs. Carter, when you went down and filed for an application—strike that please. Had you and your husband ever been separated before?

A. Yes, sir.

Q. How many times?

A. Twice.

Q. Twice before?

A. Yes.

Q. When you went and filed for an application how long had you been separated?

A. I separated on October 24, until, well, the middle of December.

Q. Were your children in school at that time?

A. Yes, sir.

Q. All of your children?

A. No, the two youngest ones.

Q. Your two youngest ones were in school, I understand your oldest child was at home then?

[185] A. Yes, sir.

Q. Were you working at all?

A. No, I wasn't.

Q. Had you ever worked before?

A. Just babysitting.

Q. Were you sent to any employment agency for work?

A. I went looking for a job and I went up to the employment bureau and I took the test up there, but they did not have anything, and I got a job right around the first of the year at the ACE Motel.

Q. The first of this year?

A. Yes, sir.

Q. What job did you obtain?

A. Cleaning rooms.

Q. Are you still working there now?

A. No, I work downtown now.

Q. How long did you work at that job?

A. About two months.

Q. And what, how much did you receive at that job?

A. About $45.00 a week.

Q. Were you renting at that time?

A. Yes, sir.

Q. Were you also receiving benefits from the Township Trustee?

A. I did for about 2 weeks after I went to work and then [186] they cut me off.

Q. They cut you off when you went to work?

A. Yes.

Q. After you left that job then, when did you leave that job, in February of this year?

A. About the middle of February or first of March.

Q. Then did you change jobs at that time?

A. No, my little boy got sick and I stayed home and then I started working here, where I am, it was the last of March, I think.

Q. But I understand then you and your husband got back together the first of March?

A. Yes, sir.

Q. Were you and your husband back together when this lawsuit was filed?

A. No, sir.

Q. Shortly thereafter, I believe?

A. Well, in March we went back together.

Q. Did any of your attorneys at Legal Service Organization tell you they would appeal the decision?

MR. MANNING: We would object that it invades the attorney client, the question invades the attorney client relation, I don't think it is a proper question.

THE COURT: The client is the only one [187] that can waive the objection.

MR. MANNING: I would advise the client she does not have to answer that question unless she wants to.

Q. Do you wish to answer that question, Mrs. Carter or would you rather not answer it.

A. I would rather not.

Q. But you did not appeal?

A. No, sir.

MR. GEDDES: No further questions, Your Honor.

THE COURT: Thank you very much. You may be excused.

(Witness excused)

MR. MANNING: The plaintiffs call Brenda Steele.

BRENDA STEELE, a witness called by plaintiffs, having been first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by MR. JOHN MANNING

Q. Witness, what is your full name?
A. Brenda Ann Steele.
Q. Where do you live, please?
A. 3392 Meadows Ct. Apt. A2.
[188] Q. Would that be in the city of Indianapolis, Indiana?
A. Yes.
Q. Are you married?
A. Yes, I am.
Q. Are you living with your husband now?
A. Yes.
Q. Have you ever been separated from your husband?
A. Yes.
Q. When was that?
A. Once last year '69 and this year of January of 1970.
Q. How long did the separation last?
A. The first one lasted one week and the second one lasted approximately 4 months.
Q. As to the second one, could you say more particularly when it started?
A. Sometime in January, and we went back together in June, first part of June.
Q. Now, relative to the separation, the second separation with your husband, did you have occasion to apply for any public assistance from the Marion County Welfare Department?
A. Yes.
Q. When did you do that?
A. Approximately the last of January, maybe first of February.
[189] Q. How long after your husband left did you do that?
A. Approximately 3 to 4 weeks.
Q. Was there any particular need that prompted you going down to the Welfare Department?

JUDGE STECKLER: Speak as loud as you can, will you please.

A. Would you repeat the question.

Q. Yes, was there any particular need that prompted you going down to the Welfare Department?

A. Yes, I didn't have a job at the time, I had to stay with my parents.

Q. Did you need anything in particular at that time?

A. No.

Q. What sort of quarters did you have with your mother and father?

A. I slept in one bed, me and my two children.

Q. Did anyone else sleep in that bedroom?

A. Yes, one sister.

Q. Do you know how many other people lived in the house the same time you and your children did?

A. Eight.

Q. Do you know how many bedrooms were in the house?

A. Four bedrooms.

Q. Was your husband providing any support, any money, anything else while he was gone during that period of [190] time from January until June, I believe you said?

A. Other than about $40.00, the whole time we were separated, he would give me $10.00.

Q. Did you have any other income during that period of time?

A. No.

Q. Did you get any public assistance from the Marion County Public Welfare Department, you yourself going down there?

A. No.

Q. Do you know why?

A. They told me it was because I had not been separated six months.

Q. Did they do that in written form or by phone or how?

Mr. Cesar: We would object to that last question, there has been no foundation laid for, as to with whom this conversation took place or when or anything of this nature.

The Court: If he connects it, she can answer this question, but we will require him to connect it up.

Q. Would you read——

The Court: You asked whether it was done in writing.

Q. In what way did you find our your application for

Public Assistance at the Marion County Welfare Department [191] had been denied?

A. They told me when I went down in person and then a week later I received a notice through the mail.

Q. What did the note say?

A. That I was denied welfare rights because me and my husband hadn't been separated six months, and if I was still interested to come and reapply after the six months.

Q. Did the note that you received also say something about an appeal, you recall that?

A. No, it didn't.

THE COURT: Do you still have that note in your possession?

THE WITNESS: No, I do not.

Q. Do you know what you did with that note?

A. Threw it away.

THE COURT: Will you attempt to connect it up and identify it from whom she learned of the denial?

Q. Yes. Were you told, the first time you went to the Marion County Welfare Department by someone, as yet, not identified, that you couldn't get assistance?

A. No.

Q. What did they tell you?

A. That I was denied welfare rights until me and my husband [192] had been separated six months.

Q. Do you know the precise date or can you say more exactly when that might have been?

A. What date?

Q. What date that might have been?

A. That we separated?

Q. No, the date you went down to the Welfare?

A. No, I can't say exact, I know it was January or February.

Q. Do you know who you talked to and talked to you?

A. No.

Q. Can you identify them in any manner?

A. No.

Q. Do you know what their position was?

A. No.

Q. Do you know where you saw them?

A. In the City County Building, on the first floor, in the intake department.

Q. In the intake department, what is that?

A. They take welfare.

Q. Did you go in an office that had some sign on it that told you where it was?

A. Yes.

Q. What did that sign say?

A. That's just about all they had, it was intake Welfare [193] Department, with a door.

Q. You talked to someone in that, inside that enclosure, is that right?

A. Yes, in the little small room inside the office.

Q. Did you talk to only one person or did you talk to more than one person?

A. I talked to the receptionist at the desk before I put in the application, and then I talked to another lady in the small room.

Q. Do you recall what that lady looked like?

A. No, she was a negro woman, I don't remember.

Q. Did anyone go with you?

A. No.

Q. Were there any persons in the office at the time?

A. Yes.

Q. Do you know any of them?

A. No, I don't.

Q. Do you know how many people might have been there at the time?

A. About four?

Q. Did any of the people you talked to at the time give you their card or did they have a name plate on or was there any other way you might identify them?

A. No.

Q. Did they tell you their names?

[194] A. Yes, but I don't remember.

Q. Did anyone ever come out to your house to search it from the Marion County Welfare Department?

A. No.

Q. Were you ever advised someone would?

A. No.

Q. When you lived with your mother and father, how long had you lived there after, I should say before you applied for public assistance from the Marion County Welfare Department?

A. About three weeks.

Q. Where did you live before that?
A. 1429 Congress Ave.
Q. Was there something that prompted you to move?
A. Yes.
Q. What was that?
A. Well, my husband and I hadn't been getting along and that night that I left we had a fight.
Q. And did your husband drive you out, under what circumstances did you leave?
A. He drove me out because he didn't really have any reason for what I did.
Q. Did you know where your husband was during this period of time you were separated, from January to June?
[195] A. Yes.
Q. At all times?
A. Well, when he left town I didn't know where he was at first, but I found out then.
Q. Did you ever take any kind of action to get support from your husband, get money from him?
A. I filed a divorce against him.
Q. Do you know who filed the divorce for you?
A. Mr. Shadel.
Q. When did you file the divorce action, when was it filed for you?
A. In January of 1970.
Q. Were you employed during the time your husband was separated from you?
A. Yes.
Q. Where were you employed?
A. I worked at Sam's Subway in February for about, and then I left there, a month, and after I left there I went to Commercial Towel.
Q. How long did you work for them?
A. I stayed there from, I would say, April to July.
Q. Do you recall what your income might have been, the take home pay from either of those places?
A. The first job, Sam's Subway I made $1.60 an hour, and if I worked a full week it would have been about [196] $40.00, but I didn't work a full week.
Q. What about the other place, how much?
A. $25.00 a week as part time.
Q. Did you try to get any other kind of a job?
A. Yes.

Q. What happened?

A. Well, I went to a few employment agencies and Man Power and they didn't have any openings and then I applied a few other places and they didn't have any openings. I took the Post Office test and I didn't pass it.

Q. What sort of education do you have?

A. High School education.

Q. You did graduate from high school?

A. Yes.

Q. Is your husband supporting you now?

A. Pardon me.

Q. Is your husband supporting you now?

A. Yes.

MR. MANNING: I have no further questions.

CROSS EXAMINATION

Questions by MR. ROBERT GEDDES

Q. Mrs. Steele, do I understand you correctly that when you went down to file an application with the Welfare Department that was in March of 1970?

[197] A. No, I said January or February.

Q. That is when you filed an application?

A. Yes.

Q. And are you saying, you are not saying they denied you the right to file an application, are you?

A. No.

Q. There is no question about filing, you are saying it was denied because you did not have a six months separation?

A. Yes.

Q. How many applications did you file with the Welfare Department?

A. One.

Q. Mrs. Steele, at the time you filed an application were you working?

A. No.

Q. Had you worked after your husband separated, after you and your husband separated?

A. Yes.

Q. Where were you working?

A. I worked at Sam's Subway first then I changed jobs a month later and went to Commercial Towel.

Q. I understand when you went down to file an application with the Welfare Department you were living with your folks?

[198] A. Yes.

Q. You didn't have any problems, I'm talking about problems of need?

A. No.

Q. Why did you quit at Sam's Subway?

A. I had a night shift and I didn't get off until one or two in the morning and I was running into a transportation problem in getting a way home.

Q. Was your husband working also?

A. No.

Q. Where does he presently work?

A. Ford Motor Company.

Q. How long has he worked at Ford Motor Company?

A. Approximately a year.

Q. What I'm saying, Mrs. Steele, when you filed your application for Welfare benefits I understand your husband was working at Ford Motor Company?

A. No, he was laid off at the time.

Q. He was laid off at the time?

A. Yes.

Q. How long had you been separated when you filed your application?

A. About three to four weeks.

Q. Then that application was, for assistance was denied?

A. Yes.

[199] Q. You were notified of this denial?

A. Yes.

Q. What did you receive, a notification in the mail.

A. Yes, I did.

Q. Were you also notified of your right to appeal the decision?

A. Yes, after we had been separated six months I had right to reapply.

Q. No, I mean, when you received this denial through the mail, this notification, do you remember reading that notification?

A. Yes.

Q. Do you remember reading that section that said your rights to appeal?

A. No, I don't remember that.

Mr. Manning: Excuse me, counsel is interjecting something that was not testified to.

The Court: Yes, she responded to a similar question on direct. I believe the record will show that.

Q. Mrs. Steele, after you filed your application, when did you go to Mr. Shadel to file this lawsuit?

A. I went to him first.

Q. As soon as the application for assistance was denied?

[280] A. No, he was the one that referred me to the Welfare.

Q. He referred you to welfare?

A. Yes, he told me to go down there.

Q. Then, when did you file this lawsuit, was this before or after you went to the Welfare Department for benefits?

A. Before, about a few days before.

Q. You filed the lawsuit before you went to the Welfare Department?

A. Yes.

Q. Mrs. Steele, I hand you just for possibly refreshing your recollection this document which is a number of pages, do you recall this document?

A. Yes.

Mr. Manning: Does counsel have the original of the document here?

Mr. Grimes: Yes, it is for refreshing the witness's recollection.

Q. Now, by examining that document can you tell when you filed the application for welfare benefits?

Mr. Manning: Counsel, did you ask if she had ever seen that before?

Q. Have you ever seen this before, I think I did.

A. Yes.

Q. Is that in your handwriting, Mrs. Steele?

[301] A. Yes.

Q. By examining this document, particularly the last page, does that help refresh your recollection as to the date you filed your application for welfare benefits?

A. No, I remember it being in February, somewhere around February.

Q. But I understand your testimony you filed this law-

suit before you went to the Welfare Department to file your application, is that right?

A. Yes.

Q. Mrs. Steele, I hand you what has been marked for identification purpose as defendant's exhibit B, have you ever seen this document before?

A. I don't remember that I have.

Q. Is that the type document you received when your assistance was denied?

A. No, I don't think so.

Q. Did Mr. Shadel or any of the attorneys at Legal Service Organization file an appeal in your behalf?

A. Yes, that is what he told me.

Q. I'm not talking about this lawsuit, you understand, did anybody appeal to the Marion County Welfare Department or to the State Welfare Department concerning the denial of your assistance?

[202] A. I don't know.

Q. You don't remember going up to the City County Building and having a review of the decision, denying you assistance?

A. No, I didn't.

Q. When did you and your husband go back together again?

A. June 12th.

Q. So I understand then, you went to the Welfare Department one time and you did not go back?

A. No, I didn't.

Q. And nobody filed an appeal in your behalf; as far as you know?

A. No.

Q. And you personally did not appeal the Welfare decision?

A. No.

Q. And I understand when you filed the application or went to the Welfare Department you were living with your folks, and you were OK, as far as your needs were concerned?

A. Yes.

Mr. Greene: No further questions.

Mr. Curry: Just a moment, if the court please. No further questions.

THE COURT: Mrs. Steele, I would like to verify something, when did you apply for assistance, [203] I think you said you separated from your husband in early January, 1970 the second time, when did you file for assistance?

THE WITNESS: Approximately it was the first of the year, January or February, I don't remember.

THE COURT: When, about when date wise, do you recall, that assistance was denied to you?

THE WITNESS: Approximately February.

THE COURT: You remember what part of February?

THE WITNESS: No.

THE COURT: Was it prior to the filing of this lawsuit or afterwards?

THE WITNESS: Afterwards.

THE COURT: You were denied assistance after this lawsuit was filed?

THE WITNESS: Yes, I really can't remember, but I would say yes.

THE COURT: Thank you. No further questions, you are dismissed.

(Witness excused)

MR. MANNING: Your Honor, may the witness go?

[204] THE COURT: Yes. By the way, Mr. Shadel, I believe the last few witnesses have been sitting in the courtroom, is that right?

MR. SHADEL: She is a named plaintiff.

THE COURT: All right.

MR. SHADEL: We would like to call Dorothy Enoch.

DOROTH ENOCH, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. DAVID SHADEL

Q. Please state your name to the court.
A. Dorothy Enoch.
Q. Where do you live?
A. 1210 West 19.
Q. Are you a married lady?
A. Yes.
Q. Are you living with your husband?
A. No.
Q. Are you and your husband separated?

A. Yes.

Q. About when did you and your husband separate?

A. About the first of January.

Q. Of what, 1970?

[205] A. Of 1970.

Q. How did it come that the two of you separated?

A. Well, I really didn't know he was going to leave me, I had gotten paid and I left $30.00 with him because we was already behind in our bills and rents and things because he wasn't working and I left $30.00 there with him to pay part of the rent, and when I came back, I went somewhere, I can't remember where I went, and when I came back they were kidding me about my husband had took off with my money, which I didn't believe that he would do that, so he didn't come home and the next morning the man next door told me it was true, and that he had wanted him to take him to the bus station, but he wouldn't take him.

Q. When did you hear from your husband next?

A. About 4 months later.

Q. Had he told you that he was leaving before he left?

A. No.

Q. Did he pay you any kind of support?

A. No.

Q. While you were separated in those four months?

A. No.

Q. Have you ever—strike that. Do you have any children?

A. Yes.

Q. How many?

[206] A. Eight.

Q. Is your husband the father of all eight children that were born in and of this marriage?

A. All but the oldest.

Q. And when was that child born, before you were married?

A. Yes.

Q. How old is that child?

A. 15.

Q. Have you ever had any contact with the Marion County Department of Public Welfare?

A. Yes.

Q. Approximately when did you have your first contact with them?

A. Oh, about the first of February, first or second.

Q. 1970?
A. Yes.
Q. What happened then?
A. Well, when I went in the lady, I told her I wanted to have application to get welfare, so she gave me the application and I filled it out, I sat at a desk.
Q. Did you have a conversation with anyone after that?
A. Yes, I had to wait and they called me in the office and I went in there and talked to another lady, I can't remember her name or nothing, but then she. . . .
Q. What did you talk about then?
[207] A. Well, she told me, asked me how long had my husband been gone and I told her and she asked me, had I planned to get back with him and I told her no, so then she told me I would have to go and apply for legal separation or either divorce at the Legal Aid Organisation.

Mr. Geddes: Your Honor, again may we identify the person she is supposed to have had the conversation with?
Mr. Shadel: Again I would indicate the defendants have in their possession documents in Mrs. Enoch's file indicating with whom this conversation was had, who the case worker, her initial intake case worker is. The witness and plaintiff has testified she does not know the woman's name. We will be glad to provide as good a physical description as possible, but I think the best evidence in this, as to the intake workers identification lies within the knowledge and control and custody of the defendants.
The Court: Did Mrs. Enoch receive any written communication of denial?

Q. After you applied for welfare, did you ever receive any kind of a letter or notice indicating what happened with your application?
[208] A. Yes, they said I was denied.
Q. Did they say why? Did the letter say——

The Court: I'm not certain the witness understood your question. I think she is referring back to perhaps oral denial or verbal.

Q. Did you ever receive a letter or piece of paper in the mail from the Welfare Department telling you what action had been taken on your application?
A. I don't know, all I remember seeing is a paper saying I was denied and why.

Q. Where did you get that paper?
A. It came through the mail.
Q. From?
A. The Marion County Welfare.
Q. Do you have that paper anymore?
A. No, a lady took it.

Mr. Shadel: Again I would point out if such a communication was received the department would have it in his custody

The Court: Would you pursue a little further, I think the witness has indicated some lady took it.

Q. Who is this lady that took it?
A. Well, she just happened by the house one day, she said she was a block club they had and she asked me was I getting the help and everything and I told her [209] no, that I wasn't getting any so then she called down to the welfare and she was trying to get me some help.
Q. Do you know what happened to that letter?
A. She kept it, she never gave it back to me, I don't know why, she asked to keep it and I told her she could.
Q. Do you know this woman's name?
A. Not offhand, I could get it, but I don't know her name, I just don't, no, I don't know her name.
Q. Again referring back to the conversation you had the first time you went down and did you fill out an application that time, the very first time?
A. Yes.
Q. Referring to that time, did you say you had a conversation with the worker at that time?
A. Yes.
Q. You remember what she looked like?
A. I know she was a colored lady, sort of brown skin, I can't be sure what she looked like.
Q. You remember how tall she was?
A. No, because she was sitting down, I couldn't tell, she is kind of heavy, a little bit, not real heavy, but sort of.
Q. Have you ever had any further communication with that [210] woman?
A. Not that one, no.
Q. Referring to the conversation you had with her again, what did this conversation consist of?

Mr. Gregg: Again, Your Honor, for the record we would interpose our objection.

THE COURT: Yes, those objections may be reserved.

Q. You may go ahead and state the conversation.

A. The same one, when I went in to apply?

Q. Yes.

A. She told me I would have to call and get a legal separation or divorce before they could consider having me.

Q. Did you have monies to go get a divorce?

A. No.

Q. Did you have any family needs at that time for which you did not have adequate income or monies to meet?

A. Yes, my kids needed shoes, some of them needed clothes.

Q. Were your children going to school all this time?

A. Sometimes.

Q. Why might they not go to school?

A. Because I didn't have enough things for them.

MR. GATES: Your Honor, that question as to why they may not——

[211] THE COURT: Sustained.

Q. Did your children have adequate clothes to go to school in?

A. No.

Q. Were you receiving any kind of help from any other assistance agency?

A. The Trustee.

Q. What was the Trustee supplying you with?

A. Well, they gave me a slip to get all the kids some shoes and they did give me an order to get some of the boys some pants, they paid two of my utility bills, my gas bill and I think my light.

Q. Were any of your utilities ever cut off?

A. The gas.

Q. About when was that?

A. In March.

Q. Were they supplying you with food stamps?

A. Yes, I was getting food stamps because I was working.

Q. In between the time you received this letter—strike that. In between the time you went down and first applied for welfare and the time you got that letter, did a welfare worker ever come to your home?

A. No.

Q. Did a welfare worker ever telephone you?

A. No.

[212] Q. During the time that you were applying for welfare were you having to borrow money from anyone?

A. Yes, I borrowed——

Q. Why were you borrowing money?

A. Because I didn't have enough of my own, I had nobody else to help me.

Q. What did you use some of this money for that you borrowed?

A. Some for food, when I ran out, and to give my daughter bus fare and food money to go to school on, pay some of my bills that I was behind in.

Q. What was the status of your rent payments at the time you went down to apply for welfare?

A. I was three months behind.

Q. Did you ever get any welfare?

A. Yes.

Q. How did it come that you—strike that. Did you ever make a reapplication or second application for welfare?

A. No, I did not.

Q. When did you receive your first check?

A. I don't know whether it was the first of April, but it was in April, I can't be sure when they sent it, but it was in April.

Q. You know why you received the check at that time?

[213] A. After I got the letter of denial I called back down to the welfare and I asked them who could I get in touch with to come and get kids when you couldn't support them, so then she gave me the name of the lady that was in charge of the child's welfare, she was the head, that is who I talked to, and so I asked would she come and get the kids, because I couldn't support them on what I was making, I wasn't going to see them, they are suffering, and I told her she could come and get them because I left them. They was going to come and put me in jail so she could just come and take them, so then she told me if I would consider keeping them she would see what she could do.

Q. Now, this was the supervisor of one of the welfare Departments?

A. The child——

Q. Child Welfare Department?

A. Yes, when you give up your kids, that department, they give it to me from the Welfare, I didn't know how to get it.

Q. During this time you were trying to get welfare did you know where your husband was?

A. No, I didn't.

Q. You had not heard from him at all?

A. No, I hadn't.

[214] Mr. Shabel: I have no further questions.

Cross examination

Questions by Mr. Homer Gemes

Q. Is that Mrs. Enoch?

A. Yes.

Q. Mrs. Enoch, to make sure I have it straight, I understand you and your husband separated in January?

A. Yes, that is when he left.

Q. Is that the end of January?

A. The first of January, because that is when I gave him my rent money.

Q. The first of January?

A. Yes, the first.

Q. Of 1970?

A. Yes.

Q. And you and your, had you and your husband separated before?

A. He had left me before.

Q. How many times had he left you in the past?

A. Oh, twice.

Q. And at the time you separated were you employed at that time?

A. This last time?

Q. When you separated in January of this year?

A. Yes, I was.

[215] Q. Where were you working?

A. Methodist Hospital.

Q. How long have worked at Methodist Hospital?

A. Well, it's going on four year.

Q. As I understand your testimony then, you went and filed an application with the Welfare Department in February of 1970, is that right?

A. Yes.

Q. So you and your husband had been separated about a month?

A. Yes.

Q. And I understand your testimony then you were granted assistance for your children effective March 1, 1970, is that right?

A. Yes.

Q. So you had only been separated, you had been separated less than two months when you started receiving benefits from the Welfare Department?

A. Yes.

Q. For your children?

A. Yes.

Q. How much did you receive per month?

A. $250.

Q. Is that in addition to what you were making at your employment?

[216] A. Yes.

Q. What did you make at your employment?

A. $135, it depends on——

Q. Every two weeks?

A. Yes.

Q. So you got the $250 a month from the welfare department, that is for all of your children?

A. No.

Q. Seven of them?

A. Yes.

Q. And you have custody of all eight of your children?

A. Yes.

Q. Wasn't one of them with one of your relatives?

A. At the time, yes.

Q. So you only had custody of 7 at the time you filed?

A. Yes.

Q. And I understand your testimony then, you were given an application and you filed the application?

A. Yes.

Q. Nobody told you you could not file?

A. No, they didn't tell me I couldn't file, but they told me they wasn't going to help me.

Q. But you were given the right to file an application?

A. Yes.

Q. And you started receiving benefits less than two months [217] after you and your husband were separated?

A. Yes, in April.

Q. I understand, correct me if I am wrong, when you did

file the application for welfare benefits it was your intention also to file for divorce, is that right?

A. Yes.

Q. Did you go down and file for divorce?

A. Yes.

Q. Who filed the divorce for you?

A. Mr. Shadel, that is why I went.

Q. Now, this lawsuit in which you are plaintiff, was filed February 27, 1970.

MR. MANNING: Excuse me counsel, is that a question.

Q. Isn't that right?

THE COURT: It is a question.

Q. Mrs. Enoch, you understand that this lawsuit was filed February 27, 1970, this lawsuit in this case here in which you sued the County and the State Welfare Department, you know anything about this lawsuit?

A. Yes, sir.

Q. When did you go to the lawyer with respect to filing this lawsuit?

MR. MANNING: We object to that, she really doesn't have anything to do with the [218] lawsuit, it's the lawyers who filed it.

THE COURT: I overrule your objection, it may have a lot to do with it.

A. It might have been two months ago or a month ago, I can't be sure.

Q. Let me help you refresh your recollection, Mrs. Enoch, a little bit. When you filed this lawsuit, you know this lawsuit that is here today in court, did you go to the lawyers to file for this lawsuit?

A. Yes.

Q. Pardon?

A. Yes.

Q. Before you received any assistance from the Welfare Department?

A. I don't quite understand, do you mean——

Q. I understand it's hard to remember dates, let me ask you this. I understand that the welfare benefits you are now receiving started effective March 1, 1970, is that right?

A. March, I though it was April that I got my first check.

Q. Do you remember receiving a notice in the mail?

A. That I would get it?

Q. Yes.
A. They both came the same day.
[219] Q. They both came the same day?
A. Yes, I got a letter and I got the check.
Q. Mrs. Enoch, I hand you what is marked for identification purpose, defendant Exhibit C, you remember or can you identify this exhibit?
A. Yes.
Q. Is that what you received in the mail from the Welfare Department telling you that you would receive assistance?
A. Yes.

Mr. Manning: Are you asking if that is the very thing you received? Is that the exact paper?

Q. Did you receive a copy of this exhibit?
A. It looks like the same paper.
Q. And what is the date of this Exhibit?
A. That says March 24th.
Q. 1970?
A. Yes.
Q. Is this, to whom is this addressed to?
A. Dorothy May Enoch, 1210 West 19th.
Q. Is that the address you were living at at the time?
A. Yes.
Q. Does that have a stamp or signature there?
A. Yes. I think so, yes.
[220] Q. I mean on the Exhibit, does it have a stamped signature?
A. Yes.
Q. You want to look at that, Mrs. Enoch, as far as identification.

Mr. Manning: Counsel, is that a post mark or what date are you referring to?

Mr. Geddes: I am having her to examine the Exhibit to make sure.

Mr. Manning: You are suggesting she received it the date that is marked on there.

The Court: If you have an objection suppose you direct it to the court instead of having the colloquy, it would make it much easier.

Q. What did you say, Mrs. Enoch?
A. I said yes, that looks like the, it was made just like that only I thought it was in April that I received it.

Q. But this has the same information on this Exhibit here as which you received in the mail?

A. Yes.

Q. And you only received one of these in the mail, I understand, is that correct?

A. Yes.

[221] Mr. Gowen: At this time, Your Honor, we would like to offer in evidence, defendants Exhibit C.

Mr. Sharer: We would object to this, unless counsel is going to allow us to inspect the rest of the file in this case to see if there is other correspondence directed to Dorothy Ann, Dorothy May Enoch. We don't know if this letter or a copy of this document was ever received by her, although she testified she received something that looked like this, we don't know if it was. There may have been other matters or other documents sent to her. There is no assurance she actually received a copy of this document as opposed to some other document which might have been mailed to her.

Mr. Gowen: Your Honor, I understand from her testimony she identified this.

The Court: We haven't seen it, I'm sure none of us know what it is. The Exhibit will be received.

Q. Just to make sure I have this correct, Mrs. Enoch, I understand that you applied, made an application for Welfare benefits shortly after you and your husband were separated, is that right?

[222] A. Yes.

Q. The first part of February, 1970?

A. Yes.

Q. And you started receiving benefits effective March 1, 1970?

A. I still think it was in April, I might be wrong, but——

The Court: I think that Exhibit has a March 24th date.

Mr. Gowen: I'm saying the effective date was March 1, 1970, that was the date on or about that date, it was dated here, but the effective date is March 1, 1970.

Q. I realize you can't remember all of the dates, Mrs. Enoch, but what I was getting at is, you hadn't been separated long and you started receiving benefits less than three months after you and your husband were separated?

A. Yes.

Q. In fact, it was less than two months?

Mr. Shadel: Excuse me, has there been a ruling on the motions to the Exhibit?

The Court: Yes, I said quite loudly, if you would pay attention, that the Exhibit would be received.

Mr. Grimes: No further questions, Your [223] Honor.

Mr. Shadel: At this time I would like to request from defendants that we be aloud to inspect the file of Dorothy Enoch, the welfare file and the documents contained therein.

The Court: At this point the Court is in no position to order any turning over of any files. We are still hearing such evidence as we can garner to determine the motion to dismiss that is filed by defendants.

Re-direct examination

Questions by Mr. Shadel.

Q. For what child are you not receiving AID?

A. Tonya Denise.

Q. At the time you were applying for welfare was she in your custody?

A. No.

Mr. Shadel: Thank you.

Mr. Manning: Your Honor, I would like to add for the record, even though the Exhibit has already been admitted the objection it is entirely self-serving because it comes from the defendant's own file.

The Court: It substantiates precisely what Mrs. Enoch says she is getting $226.00 a month. I don't see——

[224] Mr. Manning: Counsel has made much of the dates, there is no evidence alluded to by Mrs. Enoch, she testified it was in April.

The Court: She says March or April, she received it, she substantiated the fact she is receiving $226.00. You may be excused.

(Witness excused)

Lucy Hall, a witness called by plaintiffs, having been first duly sworn, testified as follows:

Direct examination

Questions by Mr. John Manning

The Court: I think we have been through this so many

times, the essential questions, you know those to which the defendant will object.

Q. Witness, what is your full name?
A. Lucy Mattie Hall.
Q. Where do you live?

The Court: Keep your voice up.

A. Lucy Mattie Hall.
Q. Where do you live?
A. 15 North Burwick.
Q. Is that in Indianapolis, Indiana?
A. Yes, it is.
[223] Q. Are you married?
A. Yes.
Q. Have you a child?
A. Yes.
Q. Is your husband the father of the child?
A. No.
Q. Are you living with your husband?
A. No.
Q. How long have you been separated?
A. Since February 9th.
Q. At or about the time you separated from your husband did you have occasion to seek any help from the Marion County Department of Public Welfare?
A. Yes.
Q. Do you know the precise date you tried to get help?
A. On or approximately February 11.
Q. Do you recall what happened when you went down there?
A. Yes, I applied for help and that is help with regards to food and whatever and I was turned down because they said I either had to be separated from my husband for six months or applying for a divorce.
Q. They, who is they?
A. Well, I say they, the man that I talked to when I applied for assistance.
Q. Where did you talk to this man?
[226] A. I believe it was in the State Office Building.
Q. Do you know his name?
A. No, I don't.
Q. Do you know who he was, what his position was?
A. No.

Q. In what office did you talk to him, if you were in the State Office Building?

A. What do you mean what office?

Q. There are a lot of different offices.

A. It was on the first floor, I couldn't tell you what room number or, it was on the first floor.

Q. Did it have a name on the door, a sign?

A. No, because when I went in the door was open and I couldn't tell, I mean I did not remember anyway at this stage what the number was or the name or whatever.

Q. Was there anything to give you any inkling what office that might have been?

A. No, I couldn't tell you, because there was, I think three offices or maybe one, but I think there were three.

Q. But for some reason you took that as the welfare office, didn't you?

A. Yes.

Q. Why?

A. I was told to take a seat and the man was out of the [227] office at the time, he was out of the office at the time and I was told to take a seat and wait and when he returned from whatever errand he had to take care of or whatever, I went in to talk to him and——

Q. You must have had some reason to think that was the Welfare Department.

A. I was told to go there.

Q. By who?

A. By my landlady.

Q. Did she tell you exactly where in the building to go?

A. She didn't tell me exactly where, no, she said go to the State Office Building and get some information and you know, try to apply for aid to dependent children, is what she said.

Q. How did you find your way into the proper office?

A. By asking information at the information desk.

Q. Do you remember the exact date you went to that office?

A. It must have been about the 15th of February, this year.

Q. Can you recall the name of anybody you talked to?

A. No, because I did not see any, or at least I don't remember any name plate on the desk. I would put it that way.

Q. Did anyone give you a card?

A. Not at that time, no.

[228] Q. Did anyone tell you their name?

A. No.

Q. When you said you applied, what do you mean by that?

A. When I say I applied, I mean that I asked for help and they said that I would have to be either applying for a divorce or be separated for six months from my husband and they referred me to a place down the street, on Market Street, I think it was across from the Rambler Automobile places, which was a Legal Aid Organization, and they in turn told me, since I lived on the west side of town that I should apply on the west side of town.

Q. Going back to when you visited the Welfare Department, said you asked for help, what sort of help did you ask for?

A. Any kind of help I could get, that is with regards to food, primarily, and this was the recommendation that they told me that, I mean, the requisition that I had to have or mandatory, whatever, I had to be separated six months from my husband, or applying for a divorce, I can't tell that to my child, I said I can't say in six months I can feed you, he's hungry every day, I can't say in six months I will give you, you know, cereal or whatever.

Q. Did you ever go back to Welfare Department?

[229] A. Yes, I did.

Q. How much later did you go back?

A. Well, let me see now, it must have been the later part of April.

Q. What happened then?

A. Then they did give me application.

Q. Did you go back to the same office?

A. Yes, yes I did, but then the first case I was supposed, well I did talk to a man and he turned me down.

Q. The same man you talked to before?

A. No, the second time I talked to a woman and she gave me an application and said that, you know, all the necessary information, you know, where I live, what my name was, how much I needed and whatever.

Q. Did you fill out the application?

A. Yes.

Q. You signed an application?

A. Yes.

Q. Were you given a copy of that application?

A. I can't remember now, whether I was or not, I may have either received it then or received it in the mail, either one.

Q. Do you still have a copy of that?

A. It may be at home, I don't know.

Q. How much income did you have at that time?

[230] A. None. At the time I applied?

Q. Yes.

A. None.

Q. Did you have any money in the bank?

A. No, if I did I wouldn't need their help.

Q. Did you have any investments that were bringing you some money?

A. No, none whatsoever.

Q. Did you have any source of support at all?

A. None.

Q. Where was your husband?

A. Well, we were separated and he works at National Starch Chemical Corporation on Grover Street and as of today he is dying of cancer and has about two months left to go, according to the doctors. He takes a $70.00 compensation, but he has to pay $25.00 out of the $70.00 to his ex-wife for support of the 11, well, 12 year old son, he is 13 years old now, 13 year old son, so it leaves very little for him to live on and very little for us to live on when we are together and we are separated now and we are right now 14 months in arrears in rent.

Q. Have you accumulated any other debts during your period of separation?

[231] A. Just the rent, just the back rent.

Q. How do you get by?

A. Well, I have $40.00 a month coming to me from the baby's father, which is $40.00 a month and out of that I try to, well, now with the welfare assistance I take that back, between the $40.00 a month I get from the baby's father and the $100.00 a month I get from the Welfare, $140.00 a month, I manage to pay the utilities.

Q. When did you start getting that $100.00?

A. I believe it was the first of May, they got it wrong on the Welfare, they said the first of March, but it's wrong, it is of the first of May.

Q. When did they get it wrong?

A. Beg your pardon?

Q. How did they get it wrong?

A. I don't know how they got it wrong, but on my card I noticed it is.

Q. You mean on some records the Welfare Department has?

A. Yes, they have it wrong, they said as of March they would be giving me assistance and I did not.

Q. Do you remember specifically when you got the first check?

A. Yes, the first of May. Let me take it back, wait a minute. It either has to be the first of May or 31st [202] of May.

Q. Sometime during then?

A. Yes, because they usually send the check the first of the month, so I either got it the first of May or first of, probably the first of May.

Q. Did you ever receive a written notice paper of any kind telling you you had been denied assistance for welfare?

A. Not a written notice, no.

Q. You never got a notice?

A. No, I was denied when I went to apply in person, they told me then and there that I had to be separated from my husband for a period of six months or apply for divorce.

Q. Have you ever applied for divorce?

A. No, I have not.

Q. Did you receive a notice when the checks started coming, did you get some paper then telling you how much you were going to get?

A. Yes, I received a letter telling me I would receive $100.00 a month, let's see, beginning, I think it was the first of May. I just have the one son, he is about two years old, so far him and myself, I don't know how they base this amount of money or whatever, but they figure that this was the amount that would be enough [233] to get myself and my son, you know, to live, that is to say, $100.00 a month.

Q. Can you account for the fact you were told one time you were not eligible for some reason and then a few months later you started getting support?

A. What do you mean by, can I account for the fact?

Q. Do you know why?

A. Yes, because they told me I had to be two mandatory reasons.

Mr. Gerges: We would object to the question.

The Court: Sustained.

Q. Did you receive any notice of the reason for the action of the Welfare Department for granting assistance?

A. Yes.

Q. What did it say?

A. It says they found I was eligible for assistance with regards to myself and my son.

Q. How long after the, after you were complaining of need did you get assistance?

A. How long after that?

Q. Yes.

A. Well, the first of May.

Q. How did you get along during that three months?

[2:4] A. You mean before that time?

Q. Yes.

A. Well, I had assistance from my relatives and friends and as I said my rent is still behind 14 months, out of this money I'm not able to pay back rent.

Q. Did you receive gifts from your friends?

A. What do you mean by gifts?

Q. Were they gifts, outright gifts or do you have an obligation to repay?

A. Well, personally I feel I have an obligation to repay them, yes.

Q. Did you appeal any of the denials we are talking about to some higher authority?

A. Would you rephrase the question.

Q. Did you appeal any of the denials you mentioned to anybody else, did you complain about the denials?

A. No, I could not afford an attorney other than the Legal Aid Society.

Q. Did the Welfare Department ever offer to provide an attorney to you to make an appeal of your complaints of any action they took?

Mr. Curry: I object to that question, there is no relevance to this lawsuit whether——

The Court: Sustained.

A. Would you repeat that question, please?

[235] Q. The objection is sustained so I can't ask the question.

A. Oh, I'm sorry.

Q. Are you working now?

A. No, I am not.

Q. Have you worked during the period of time between your first contact you have testified to and now?

A. No, I have not, I am looking for work, I check the papers, I check the want ads, I have a bad back I hurt some years ago and it renders me incapacitated, so to speak, from time to time. I lose motor power in my legs and I'm not able to work all the time, I am trying to look for work, I can try to support myself.

Q. Are you under the care of a doctor?

A. Well, yes and no, on and off, you know, and we are trying to get an xray taken of my back and maybe have an operation and perhaps he can take care of the back so maybe I can work 8 hours straight, you know.

Mr. Manning: I have no further questions.

Cross examination

Questions by Mr. Robert Grimes

Q. Mrs. Hall, it's getting late here so I will make this as short as I can.

A. I think that's a good idea.

Q. But I understand from your complaint filed here that [236] your husband and from your testimony you and your husband separated about February 9, 1970?

A. Yes, sir, that's correct.

Q. And I also understand from your testimony you did file an application with the Marion County Welfare Department?

Mr. Manning: Counsel, the witness has already testified, would you like the record read?

The Court: Mr. Manning, I must ask you to address your objections to the court, you are interrupting improperly and I don't want to admonish you, but you have done this repeatedly. May I say you have done, in asking questions before, as a matter of fact, of your witnesses, I think you should be a little bit careful about some of these things. Please proceed.

Q. Let me go back and ask it this way. You remember when you did file an application for welfare?

A. You mean the exact date?

Q. Yes, approximately.

A. February 11, approximately.

Q. That was approximately one month after you and your husband separated?

[237] A. No, you are wrong, a couple of days after my husband and I separated.

Q. I'm sorry, a couple days after you and your husband separated?

A. Yes.

Q. And then I understand from your testimony that you were granted assistance effective May 1, 1970, is that right?

A. Yes.

Q. In other words, this is for your one child you have?

A. Yes.

Q. In other words you started receiving benefits from the Welfare Department, Marion County Welfare Department as aid for your child, effective less than 3 months after you and your husband separated, is that correct?

A. Approximately, yes.

Q. So there wasn't any six months waiting period until you did receive any benefits?

A. There wasn't a six month waiting period, no, but why did they give me the problem——

Q. You just answer the question, don't get carried away. Let me ask you this, I understand also that you have not filed for any divorce, is that right?

A. As of yet, no.

Q. Now, at the time you filed this lawsuit as one of the [238] plaintiffs, this was filed on February 27, 1970, at the time you went did you contact Mr. Shadel?

A. Yes, well, there was a Robert Warren I have talked to and he in turn referred me to Mr. Shadel, yes.

Q. With the denial at that time of any application or the denial of any action or the denial of any right to file, did you appeal at that time to the State Department of Welfare?

A. I wasn't aware of the fact that I could until I talked to Mr. Shadel, that I could go back to the Welfare Department and demand an application for Welfare aid, I wasn't aware of the fact, no.

Q. Did they also advise you of your right to appeal at that time, that is in February 27, 1970?

A. I wasn't informed I could go back and say I could demand an application for Welfare aid.

Q. Mrs. Hall, I hand you what has been marked for identification purposes as defendant's Exhibit D, have you ever seen that Exhibit before, can you identify it?

A. Yes, I have one at home.

Q. What is the date on that Exhibit?

A. You mean on this one or the one I have at home?

Q. The one on this Exhibit.

A. You mean the date up here?

[239] Q. Yes.

A. That says May 19th.

Q. 1970?

A. Yes.

Q. Is that addressed to you?

A. Yes.

Q. Does that have a stamped signature on it?

A. Yes, it has now.

Q. Is that the same as the one you received at home advising you of the assistance to your child?

A. Not the exact statement, but approximately.

Q. Was there anything different about it?

A. Well, it's a different form, I mean, it says the same thing, but it's a different form, it says I was eligible to receive aid.

Q. Is this the same or a copy of exactly what you did receive at home?

A. No, it's not the same or a copy of.

Q. But you did start receiving benefits effective May 1, 1970?

A. I would say so, yes.

Q. When you filed for your application I understand you had the one child?

A. Yes.

Q. Are you and your husband back together now?

[240] A. No, we are not.

Q. Have you ever been employed?

A. Oh, yes.

Q. Where have you worked?

A. Well, over 27 year span, where do you want me to start?

Q. Just generally.

A. Generally. Well, generally I would say factory work.

MR. MANNING: We would object to questions general, it it not tied to the instruments in this case.

MR. GEDDES: I will withdraw the question.

Q. From the time your husband—from the time you separated until you did receive benefits I understand you were receiving some benefits from the Township Trustee?

A. Yes, sir, you are right.

Q. And you waited less than three months until you started receiving welfare benefits?

A. Yes, you can put it that way.

Q. From the time you and your husband separated?

A. Approximately.

Q. You and your husband ever separate before?

A. Yes.

Q. How many times?

A. Once.

[241] MR. GEDDES: No further questions.

THE COURT: Mr. Curry, do you have any questions?

MR. CURRY: No, Your Honor.

MR. MANNING: Nothing further.

THE COURT: You may be excused.

(Witness excused)

MR. SHADEL: May it please the court, at this time I would like to offer into evidence and renew our motion to introduce into evidence the depositions of all the people named in our motion filed in this court last week. Three of the depositions are not in the custody of this court yet but I would offer into evidence the depositions of all the persons that have not testified to date, including the depositions of the four people from the Lake County and the two people from South Bend, St. Joseph County, Department of Public Welfare. The purpose—I would also offer, make an offer at this time to offer the testimony of Sela McClusky who is a resident of Ligonier, Indiana. The purpose here offering—

THE COURT: May I make one suggestion, so I will not have to interrupt and ask questions. [242] When the individual whose depositions you may wish to offer are outside of Marion County I think it might be wise to identify them as not of Marion County.

MR. SHADEL: Certainly. Specifically I would like to offer into evidence the deposition of Kay Ankin, who is a resident of St. Joseph County. The deposition of Lillian Evans, a case worker—who is a case worker with the St. Joseph County Department of Public Welfare. The deposition of Linda Maskowitz, who is an attorney in Gary, Indiana and who resides there. The deposition of Kay Lambey, who is a resident of Lake County, Indiana. The deposition of Phillip Grammar, who is a case worker with the Lake County Department of Public Welfare. And the deposition of Betty White, who was a case work supervisor with the Lake County Department of Public Welfare.

THE COURT: No determination will be made at this time, so we will leave that motion pending.

MR. SHADEL: Need I state any reasons at this time for allowing these into evidence.

THE COURT: No, I don't think so. Why don't [243] we try to get rid of the original motion we started with. I go by old Robert's rules of order, we handle one motion at a time.

MR. SHADEL: The reason I would ask the court allow these into evidence and the reason we are submitting them is to prove a general state wide application or misapplication of the regulation and of a wide spread policy requiring applicants to initiate actions for divorce or legal separation as a condition to receiving aid.

MR. CURRY: I would like to state an objection.

MR. SHADEL: Excuse me. I would further like to offer into evidence a letter from a case worker in the La Porte County Department of Public Welfare, Nolla M. Bond, for the same reason.

THE COURT: You say a letter?

MR. CURRY: We would object to that, there has been no ground laid for the foundation of that.

THE COURT: I think I would have to sustain the objection.

MR. SHADEL: I might say the letter is a [244] letter from a case worker, from the County Department——

THE COURT: I understand quite well precisely what it pretends to be, but without a foundation I don't, we cannot except it in evidence.

MR. SHADEL: It is a declaration.

THE COURT: I quite understand.

MR. CURRY: I would like to speak a moment or two to the offers of the depositions, as previously listed by the plain-

tiffs. Although these people do live, in fact, more than 900 miles away I would point out to the court that although the order was overruled, it was originally an order in this courtroom——

THE COURT: What order was overruled?

MR. CURRY: There was an order in this courtroom setting an end to depositions, that order was overruled, the plaintiff was given additional time to take those depositions. The individual counties plaintiffs seeks to introduce depositions of are not named defendants in this lawsuit. The cases which he has taken depositions of in those counties have not been appealed, so in that respect the [245] State is in no, has no way to review these depositions and make its determination, and I feel any attempt to introduce is superfluous; furthermore if the court does elect to allow the depositions in evidence I feel in view of the extreme pressure in preparing for the case that we be allowed leave in which to take depositions if we desire and time to take those depositions in order to rebut this evidence.

THE COURT: I do understand in previous conversation there was a representative of the State there at the time the depositions were taken.

MR. CURRY: Yes.

THE COURT: And I believe objections were made at the time of the taking of the depositions, am I correct in that?

MR. CURRY: Yes, I was at the taking of those depositions.

THE COURT: And those objections have not been passed upon as yet by the court?

MR. CURRY: That's correct.

THE COURT: Since we are holding the ruling on the motion in abeyance we will consider your objections at such tice as we [246] arrive at a decision on the motion.

MR. CURRY: Would the court, at that time, consider a motion for the defendants to rebut this?

THE COURT: I say at that time is not complicated, it's a very simple matter, I would like to have one thing at a time, I find it simpler and better to dispose of those matters. Do you have anything to offer in defense as defendants in this matter to the evidence of the testimony produced by plaintiffs' today?

MR. GEDDES: Yes, Your Honor. Am I correct you have rested, Mr. Shadel?

MR. SHADEL: With respects to the defendant motion to dismiss plaintiffs rest, representing of evidence.

MR. GEDDES: I would like to offer some evidence, Your Honor, and I would like to, and I was under the misapprehension when we started this hearing, that was my fault, we were, until I realized we were about half way through, I would like to offer evidence only in rebuttal to the plaintiffs claims and within the filing of the complaint. In other words, as far as the purpose of this hearing is concerned, I [247] would like to restrict only to that period so that I don't have to get involved in refuting allegations that were made after the filing of the complaint.

THE COURT: The court will accept your offer within that limitation thereof, defense to the plaintiffs named in this complaint.

MR. GEDDES: Thank you, Your Honor.

MR. CURRY: My I clarify the record. Is it understood all we are concerned with as far as the evidence regarding the motion to dismiss, are the plaintiffs named in the complaint?

THE COURT: That is what I thought I said. We will recess for 10 minutes.

ELLEN BLANKENBACKLER, a witness called by defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. ROBERT GEDDES

Q. Would you state your full name, please.
A. Ellen Blankenbackler.
Q. Mrs. Blankenbackler, where do you live?
[248] A. 429 North Arnolda.
Q. Is that in Indianapolis?
A. Yes, sir.
Q. How long have you lived in Indianapolis?
A. 8 months.
Q. Do you have any children?
A. I have three.
Q. What are their ages?
A. 3, 2 and 8 months.
Q. Are you married now?
A. Yes, sir.

Q. What is your husband's name?
A. Donald Blankenbackler.
Q. Are you and your husband presently living together?
A. No, sir.
Q. Did you separate?
A. Yes, sir.
Q. Could you tell the court approximately when you and your husband separated?
A. The 30th of January.
Q. Of what year?
A. 1970.
Q. Mrs. Blankenbackler, did you go to the Marion County Welfare Department at any time to file an application for assistance?
[249] A. Yes, I did.
Q. For your children?
A. Yes, sir.
Q. Do you recall approximately when that was?
A. It was around the 8th or 9th of February.
Q. Of what year?
A. 1970.
Q. From filing that application did you receive any benefits?
A. Yes, sir.
Q. What benefits did you receive?
A. I received $150.00, $125.00 at first and then after the baby was two months old, see I was pregnant before I filed and then I received $25.00 for him after he was two months old.
Q. For a total of $150.00—
A. $150.00 now.
Q. $150.00 a month. When did you start receiving those benefits?
A. Second of March.
Q. Of 1970?
A. Right.
Q. So I understand then, that you and your husband separated January 30, 1970, you filed an application with the Marion County Welfare Department in February [250] 8th, 1970, and you started receiving benefits March 2, 1970?
A. Yes, sir.

Q. Have you ever filed for divorce?
A. No, sir.
Q. When you went to the Marion County Welfare Department, Mrs. Blankenbackler, were you denied the right to file an application?
A. No, sir.
Q. Were you requested or required to file a divorce suit?
A. No, sir.
Q. Were you requested or required to file legal separation?
A. No, sir.
Q. Did they request you to do anything?
A. No, sir.

MR. GEDDES: No further questions, Your Honor.
MR. CURRY: No questions, Your Honor.
MR. SHADEL: No questions on cross-examination.
THE COURT: Thank you very much.
(Witness excused)

SHIRL SMITH, a witness called by defendants, having been first duly sworn, testified as follows:

[251] DIRECT EXAMINATION

Questions by MR. ROBERT GEDDES

Q. Would you state your full name, please?
A. Shirl Smith.
Q. How do you spell your first name?
A. S-h-i-r-l.
Q. Mrs. Smith, I am going to be asking you a few questions, and would you speak up loud enough for the court and for the attorneys in the back to be able to hear you? Where do you live, Mrs. Smith?
A. 1437 East 11th Street.
Q. Is that in Indianapolis?
A. Yes.
Q. How long have you lived in Indianapolis?
A. I have been here a year in September.
Q. What is your age?
A. I'm 38.
Q. Do you have any children, Mrs. Smith?
A. Yes, I have three.
Q. What are their ages?

A. 14, 13 and 2.

Q. Are you presently employed?

A. No, I'm not now, but I'm going to be.

Q. Are you and Mr. Smith living together?

[252] A. No, sir.

Q. Are you divorced?

A. No, sir.

Q. When did you and Mr. Smith separate?

A. We have been separating ever since we got here, permanently, the last he left, about the first of March.

Q. Of this year?

A. Yes, sir.

Q. Did you at any time file an application for welfare benefits for your children?

A. Yes, I did, at the end of March of this year.

Q. The end of March, 1970?

A. Yes, sir.

Q. And did you receive any benefits for your children?

A. Yes, I did, immediately, about the middle of April.

Q. Of this year?

A. Yes.

Q. So I take it, it was less than two months after you and your husband were separated?

A. Yes, sir.

Q. Did you receive any benefits from the Trustee?

A. I received a food order from them, in fact I was getting it when my welfare check came and I called them and I told them to stop because I was on welfare, [253] I would not need it.

Q. In other words you started receiving relief from the Trustee?

A. Yes, I did.

Q. Mrs. Smith, before you started—strike that please. Were you denied at any time the right to file an application for welfare benefits?

A. Oh, no sir, they were very nice, they assisted me right away, in fact, the man, I believe he is here now, in that other room, he wrote on the bottom of my application to waive six months waiting period and within three days there was somebody there at my house to talk to me, case worker.

Q. Were you requested or required to file any application for divorce?

A. Yes, I was, when I went to the Trustee's office, they told me they would not help me unless I went down to Legal Services, I went down on Broadway, and when I went down there the attorney there told me this was unconstitutional, I did not have do do that, so he called the Trustee's office and talked to a Mrs. Cole at the Trustee's Office and then I went back there, I told them what the man from the Legal Services had said and they wrote me a letter confirming this and they sent me down to the Welfare Department.

[254] Q. But when you went to the Welfare Department there, were you told you had to file for divorce?

A. Oh, they would not help me until I went to the Legal Services, in fact, I ran back and forth a couple of days, it was hard to get an appointment to see the men from the Legal Service and there was a woman there, I told her I needed some kind of assistance and she gave me a special appointment.

Q. Did you file for divorce?

A. No, sir, I did not.

Q. Have you ever filed for divorce?

A. No, sir.

Q. Have you filed for any legal separation?

A. No, I have not.

Q. Were you at any time denied the right to file an application with the Welfare Department?

A. No, sir, I was given an application immediately the very first day I went there.

Q. What benefits are you now receiving, Mrs. Smith?

A. I'm getting $150.00 a month and food stamps.

Q. And food stamps?

A. I take the money out of my check and buy my food stamps.

Q. And I understand you have been receiving these benefits since?

[255] A. I believe it was the first—no, it was the middle of April, because the check came in the middle of the month.

Q. 1970?

A. Yes.

MR. GEDDES: No further questions.

MR. CURRY: No questions.

MR. SHADEL: I would object to the entire testimony of this witness as it relates to the period after the suit was

filed and it would appear that plaintiffs were precluded from offering evidence on defendants motion for the time period after the suit was filed, defendants should be likewise precluded from offering testimony to this time period.

THE COURT: I fail to follow you on, I don't recall that we sustained any objection on any of your witnesses after the filing. I think we begin to limit you to the plaintiffs to the suit, because we had gone quite broadly.

MR. SHADEL: I believe I offered the testimony of a woman by the name of Helen Gibson and the court refused to hear her testimony because her action had taken place after the date this suit was filed, that was the specific [256] reason counsel had objected to her testimony.

THE COURT: That was the time I think I suggested we ought to hear the testimony of the plaintiffs in this matter.

MR. SHADEL: I still move the testimony of this witness be stricken.

THE COURT: It will be overruled. It may stand.

CROSS EXAMINATION

Questions by MR. JOHN MANNING.

Q. Madam, you mentioned a six months rule or something about six months?

A. Sir, I didn't say anything about six months, nobody ever mentioned to me. I get all confused. The Trustee's office told me that they would not help me unless I had filed a separation or a divorce paper, in fact, this case worker from the Trustee's office was very very, she just refused to help me unless there was some kind of confirmation in the record that I had been down to the Legal Services and when I went to the Legal Services on Broadway they told me they would not even bother to fill out the application because this rule was unconstitutional and they had a lawsuit pending at that time where they were either sueing, I can't remember which, the Welfare Department or the Trustee's [257] office, I have a letter that I gave to my case worker. They wrote to me and told me that this had been, that they would no longer have an open case for me, I don't know, but this is a confirmation of that. I had been there and this was not so that I did not have to file a divorce or separation and this information came from the Legal

Services, but this was done at the insistance of the Township, but I never heard anything from the Welfare Department about this rule at all, in fact, within three weeks time I was receiving benefits.

MR. MANNING: I would ask the reporter to go back and make sure I heard something for six months.

THE COURT: As I recall the testimony it had reference to the Township Trustee, so far as the Township Trustees were concerned.

MR. MANNING: I have no further questions.

MR. GEDDES: No further questions.

THE COURT: By the way, Mrs. Smith, where is your husband now?

THE WITNESS: Sir, the last time I heard he was down on skid row in Green Bay, Wisconsin.

THE COURT: He has not assisted you?

THE WITNESS: No, sir, no.

[258] KEITH EUGENE CARVER, a witness called by defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by MR. ROBERT GEDDES

Q. Would you state your full name, please.

A. Keith Eugene Carver.

Q. How do you spell your last name?

A. C-a-r-v-e-r.

Q. Mr. Carver, I'm going to be asking you some questions here, I would like you to speak up loud enough so the attorneys in the back, in the courtroom will be able to hear you. Where do you live, Mr. Carver?

A. 3501 Guion Road.

Q. In Indianapolis?

A. Yes.

Q. Are you a married man?

A. Yes.

Q. Have any children?

A. No, sir.

Q. How long have you lived in Indianapolis?

A. Since February, '67.

Q. What is your present job or occupation?

A. I am an intake case worker with Marion County Department [259] of Public Welfare.

Q. How long have you been with the Marion County Department of Public Welfare?

A. Since February 23, 1967.

Q. How long have you worked in intake department?

A. I have been doing intake since I was originally hired in '67.

Q. What are your educational qualifications?

A. I have a bachelor's degree from Indiana State University, I graduated in June, '66, with a major in sociology and minor in psychology.

Q. Mr. Carver, as a case worker in the intake department what are your duties?

A. The duties consist of interviewing clients that come into the Welfare Department, there is, I think, need for distinction here, in that everyone that comes in is not actually an applicant for public assistance. A lot of times we refer people to other agencies who might be of more assistance than we could offer them.

Q. In what respect are you talking about?

A. In respect to travelers aid services, whatever the particular situation relates to, it's hard to say.

MR. MANNING: I'm going to object to the answer, the question relates to something, he's gotten beyond that point. [260] THE COURT: He is explaining what his duties are, as I understand it, it is a response.

A. Yes, this is a part of my duties.

Q. What I'm getting at, Mr. Carver, for clarification purposes, you are involved with interviewing a number of different people for various problems, is that right?

A. Yes.

Q. In narrowing this down to individuals who desire assistance for their children, for dependent children, how do you handle that as a case worker, in the intake department?

A. If a person comes in to apply for ADC they are first interviewed by a worker such as myself who trys to determine their initial eligibility, which includes their need, their situation as it pertains to their application whether or not they meet the eligibility requirements, then if the requirements are met they are given an application. I proceed in

processing the application, making a recommendation to the County Board which either approves or denies the assistance.

Q. What is your policy, or practice, what has it been as a case worker in the intake department with respect to accepting or denying an application for [261] assistance?

A. Well, I have never denied anyone the right to apply for Public Welfare.

Q. How about a person who has been separated and the separation is less than six months?

A. It is still their prerogative to apply for assistance if they so wish. The decision as to whether or not assistance is granted becomes determined, well, let me restate that. If a person is separated six months or shorter than six months period, has applied for assistance, if this is considered bona fide separation then the assistance is granted. If there is undue hardship or need then the six months separation can be waived.

Q. In determining a bona fide separation what factors do you take into consideration in making that determination or recommendation?

A. If the client has made some legal action to gain support then this would be considered a bona fide situation, a client is making a reasonable effort to gain support, this effort indicates the separation is bona fide and will continue for longer than six months.

Q. How about with respect to the needs of the individual?

A. Yes, we do this on a case to case basis, to try to [262] determine if there is a, indeed a hardship, a hardship or unusual need, in which case then the six months separation is waived. If I might add, I have never had a request for six month waiver denied.

Q. In other words you make a recommendation?

A. Yes, the case workers make the request for six months waivers.

Q. In your duties and responsibility as a case worker in the intake department, have you made recommendations for a waiver of the six months period?

A. Yes, sir, I can't give you numbers, but I would say many.

Q. And that would be based on need and the fact the separation is bona fide?

A. Yes.

Q. Do you have any requirements that before an application can be filed a person has to file for divorce?

A. No, there is no requirement.

Q. Or that a person has to file for legal separation before filing an application?

A. No, however I might point out if they request or seeking some means of gaining support we do refer them to other agencies where they might avail themselves of this.

Q. If you refer them to another legal agency, who would [263] you refer them to?

A. As a rule we refer them to either LSO or Legal Aid.

Q. That would be aid in obtaining support or filing for divorce, if they desire?

A. Yes.

Mr. Gross: No further questions, Your Honor.

Mr. Curry: No questions, Your Honor.

Cross examination

Questions by Mr. John Massino

Q. Mr. Carver, where may I find the rules you apply in your intake section?

A. I'm sorry, I don't believe I understand the question.

Q. Where may I find the rules you apply in your intake section?

A. I'm still not sure what you mean by rules, do you mean the public assistance manual?

Q. Just what I said, the rules, policy rules?

A. We have no rules other than the public assistance manual, their procedure, if you are talking about procedural rules.

Q. Yes, procedural rules, any kind of rules, that's right.

A. I can give you the procedure as to how one makes application.

Q. I said where could I find those, where can I find [264] those, where might I find those?

A. Where may you find the rules?

Q. Yes.

A. In the public assistance manual.

Q. That is the only place I may find them, is that right?

A. As far as I know.

Q. Where in the public assistance manual may I find something that says that commencement of a divorce action or an action for legal separation lends credence to a claim for bona fide separation?

A. I don't know that you will find that, sir.

Q. Could you cite me the regulation?

A. No, I cannot.

Q. Are you familiar with the manual?

A. Yes.

Q. Where does this come from?

A. It's a matter of logic, I think.

Q. It's a matter of apriori reasoning, is that correct?

A. I don't understand.

Q. Is that a contingent term, apriori concept like space and time, is that what it is?

A. I'm sorry, I still don't follow you.

Q. If I came into your department and I said I am in need what would you do?

A. I would ask you about your home situation, how many [265] children you have, try to find out what the need was and how we might better help you to overcome this need.

Q. You wouldn't hand me an application, would you, that wouldn't be the first thing.

A. If you asked for it I would.

Q. But that wouldn't be the first thing if I didn't ask for it, would it?

A. No.

Q. You don't gain a mere call or request for assistance, a plea, you don't regard that, you don't deem that an application, do you?

A. You mean a telephone call?

Q. No, I haven't mentioned a telephone call, have I?

A. What kind of a call are you referring to?

Q. Just what I said, I go into your department, I say I am in need, the first thing you do is not hand me an application, is it?

A. Not unless you ask for it.

Q. You don't regard that as an application, do you?

A. No.

Q. What do you mean by the term initial eligibility?

A. Initial eligibility pertains to a person who is making their first application for assistance.

Q. What do you oppose that to, what other kind of [266] eligibility is there?

A. Well, there would be a reapplication for someone who was at sometime prior to receiving assistance and had withdrawn or been discontinued for some reason, if they came in a second time they would make a reapplication.

Q. Is it possible for a caller or an applicant to make a request to the Welfare Board for a waiver of the six months?

MR. CURRY: I would object to that question, there is no ground laid for it. First, to point out the State Board and County Board——

THE COURT: Rephrase your question.

Q. Let's go back to the situation where I go in and I say I would request a waiver of the six months rule, how do I do it, I want to do it to the County Board, I don't want to do it to you, I want to go to the County Board and make a request for waiver, how do I do that, tell me how I do it.

A. I think you could write a letter to the County Board directing it either to Mr. Stanton or the Board and your request would receive attention.

Q. Has that ever been done, to your knowledge?

A. Not to my knowledge.

[267] Q. Why is legal action evidence of bona fide separation?

A. This indicates that the client is trying to gain some support, we are talking about cases where children are involved and that is the, so if they are taking some action to gain support this would indicate that the separation was bona fide.

Q. How does one get aid, not aid, how does one get support from one's spouse without starting a divorce action or action for divorce from bed and board, whatever it's called in the State?

A. They can go either to Juvenile Court or to the support office in the prosecutor's office and ask for a support action.

Q. Do you often send people to the prosecutor's office?

A. Yes, we send them anywhere they might avail themselves of some means to—

Q. That does not respond to my question, do you often send people to the prosecutor's office?

A. Yes.

Q. How would you decide what criteria you use to send the mto the prosecutor's office or to the Legal Aid Society they said are available in this community?

A. It would depend on a particular situation.

Q. Can you give me any idea?

[268] A. If there was already some support action pending there would be no need to send them to Legal Services.

Q. Let's suppose there is no proceeding pending, how do you decide then where to send them?

A. If a client has some financial income then they can obtain their own private attorneys.

Q. Yes, suppose they don't have any resources, let's suppose their need is object?

A. In that case we would more than likely send them to the Legal Aid, LSO or Legal Aid.

Q. Why not to the prosecutor?

A. Well, simply because LSO and Legal Aid offer the people who cannot provide themselves with private attorneys.

Q. Well, the prosecutor serves the same function, doesn't he, isn't he a public attorney?

A. Yes.

Q. Why do you love divorce so much?

A. I don't love divorce.

Q. You send a lot of people to get divorces, don't you?

MR. GEDDES: I'm going to object to counsel arguing with the witness.

MR. MANNING: That's a question.

THE COURT: Sustained, it's a conclusory question.

[269] MR. MANNING: I withdraw the question.

Q. What is undue hardship?

A. Here again we are talking about individual situations, if a woman has nine children and no means of supporting herself, that is an undue hardship.

Q. Is anyone ever turned down because of the six months rule who does have need?

A. Not to my knowledge, sir.

Q. Do you have any idea of the volume of people that are turned down because of the six months rule?

A. No.

Q. You don't keep records of that?

A. I suppose there are records, but they are not available to me.

Q. Who are they available to?

A. To the staff of the Welfare Department.

Q. Who?

A. To the administrative staff.

Q. Who?

A. Mr. Stanton, Mr. McGruder, assistant director.

Q. They do have records of that.

A. Of course, they have records.

Q. They do have records. You said you never had a request for a waiver denied?

A. That's true.

[270] Q. How many do you make?

A. I can't give you numbers but I have had many.

Q. What are the usual grounds, is pregnancy the common ground?

A. Pregnancy is common.

Q. You recall Hedie Edwards case, did you talk to her?

A. I don't recall.

Q. Do you have any records that would show you that?

A. If she was there and I talked to her we would have some records.

Q. Do you have that available to you here today?

A. No.

Q. Did you deal with Mrs. Blankenbackler?

A. The name sounds familiar, but I don't remember that I did.

Q. She was pregnant too, wasn't she?

A. I don't recall.

Q. You wouldn't be able to recall anyone you talked to?

A. Yes, if it was recently, you must understand I process between 35 and 40 cases a month and it becomes a little difficult to remember each individual.

Q. Who is your immediate supervisor?

A. Webbink.

Q. Do you know who her supervisor might be?

A. Yes.

[271] Q. Whom?

A. Mrs. Frances Steele.

Q. Is she here tonight?

A. Yes.

Q. There are no internal memoranda or guide lines policy set down in writing which you have received from Mr. Stanton, Mrs. Steele, or any other supervisor, regarding your functions and the policies and criteria to be applied as far as six months rule is concerned and exceptions to that rule and finding of undue hardship, let us say, and what was the other term, initial eligibility, you have any memos from Mr. Stanton or Mrs. Steele, or anyone else or, say, from the County Department, the County Board of Welfare, do you have any memoranda or policies in writing from them regarding that particular item, six months rule and the exceptions to the six months rule?

A. I don't recall receiving any other than what is stated in the public assistance record.

Q. Do you ever send anyone to the Trustee's office?

A. Yes.

Q. Who do you send to the Trustee's office?

A. People who are in immediate need.

Q. Isn't it your function to provide aid to people in [272] need?

A. The Welfare Department doesn't have any funds for emergency assistance.

Q. I see, so if you have an extreme aid you should not go to the welfare department, is that right?

A. I didn't say that, sir.

Q. You can't help me, why should I go there?

A. We can help but not in terms of emergency assistance.

Q. I see.

MR. MANNING: Nothing further.

MR. GEDDES: Just real briefly, Your Honor.

RE-DIRECT EXAMINATION

Questions by MR. GEDDES

Q. Mr. Carver, as I understand you have and do refer individuals to the Township Trustee where they can get immediate relief, is that right?

A. Yes.

Q. And I understand in filing an application there is still a period of time in which they receive benefits?

A. Yes, within 30 days after the application is made.

Q. So you are talking about this interim period?

A. That's correct.

MR. GEDDES: No further questions.

THE COURT: Mr. Carver, you stated that in [273] matters of separation the filing of a legal action for separation or divorce gives credence to a bona fide separation, what else is considered bona fide?

THE WITNESS: If a person has been or is going to Juvenile Court to pursue a support action or through the prosecutor's office this too would be considered a bona fide separation and in terms of hardship the bona fide separation takes second place in order, I'm sorry—takes second place behind need, and this, in this respect.

THE COURT: In other words, need has priority?

THE WITNESS: Yes, in cases of hardship.

THE COURT: Can you name any other criteria that would give credence to a bona fide separation, let me reverse the question. We have documents before us, Mr. Carver, that were received from the County Department, which have denied assistance as stated for the reason there is not a six months separation, how does one come to this to deny on that basis?

THE WITNESS: As I said earlier, we try [274] to determine need with each client interview. If a client has some means of support without receiving welfare, that is, if there is some other outside income assistance from some other source that they can rely upon and are not in a hardship need situation then the six months separation would not be waived.

THE COURT: Let us take a case which there is testimony before us, and quite by coincidence the name is Carter, in which Mrs. Carter testified that her husband left her on the 24th of October, 1969, she had six children, one was at home then, one wasn't home then, and her son fell and had a foot injury, she was denied assistance because of no six month separation, no outside income, no assets, would you consider that a case of hardship, as I said all I know is what has been presented to me by way of testimony.

THE WITNESS: From the facts you have given me, I would say I would consider it a hardship.

THE COURT: We have a case of Brenda Steele, she is separated from her husband the second time, in January of 1970 applied for assistance, [275] last part of January, because she had no place to stay she stayed with her parents,

taking her one child with her she shared a bedroom with her children and one of her sisters, she was denied assistance, she had no means of income, she did later get a job part time, I think, working at a tavern, these are the facts, she was denied assistance, because she was not separated for six months.

THE WITNESS: If her parents were able to provide her total needs——

THE COURT: I think there was six or seven other children in the home, brothers and sisters.

THE WITNESS: This load does not answer the question, if her parents were able to provide her needs.

THE COURT: Very well. Those are the only questions I have. Any further questions. Thank you very much, Mr. Carver.

You may be excused.

(Witness excused)

THE COURT: By the way, may I see counsel just a minute. Rather than doing some fencing, as you are putting in, certain of your people, [276] I see Mrs. Hartzler who is identified in, previously in the courtroom, she was identified by Mrs. Luke as a case worker, rather than to fence with these things you do know from your files who the case worker was that may have interviewed certain of these witnesses we had before us. I think perhaps the best way to handle it is to identify them as such so we don't have to go through a lot of motions and soforth and so on.

MR. GEDDES: No we don't, we don't have all of them here.

THE COURT: For those you do have here in relation to the individuals who testified I think we go right to it. We can come to a decision on this, I think a lot easier and more objectively.

MR. GEDDES: Yes, sir.

LOIS HARTZLER, a witness called by defendants, having been first duly sworn testified as follows:

DIRECT EXAMINATION

Questions by MR. GEDDES

Q. Would you state your full name, please?
A. Lois Hartzler.

Q. Are you married lady?

A. Yes.

[277] Q. Where do you presently live?

A. In Indianapolis.

Q. How long have you lived in Indianapolis?

A. Two years in August, last August, two years.

Q. What is your present job or occupation?

A. I am a case worker in the intake division of Marion County Department of Public Welfare.

Q. Do you know or recall a Laverne Carter?

A. Yes.

Q. Did you have an opportunity at any time to call upon Mrs. Carter, at her home?

A. Yes.

Q. Did you review some of the facts in her case?

A. Yes.

Q. Was anybody else home when she was home?

A. I don't recall, I think there may have been some children home during part of the interview.

Q. When did you call upon Mrs. Carter?

A. I'm not sure of the exact date, I believe it was in December, 1969.

Q. Could you tell the court exactly what transpired between you and Mrs. Carter?

A. Yes. I made a visit to her home regarding her situation at that time, that would be her financial situation, her separation from her husband, her children, just [278] what do you want to know?

Q. What was your purpose of going to see Mrs. Carter?

A. To determine her need, her financial situation.

Q. Has she filed an application for assistance?

A. Yes.

Q. Were you the case worker assigned to contact her?

A. Yes.

Q. And what transpired between you and her as to your conversation with Mrs. Carter?

A. I asked her what her financial situation was at that time, what her sources of income were, how long she had been separated from her husband. I asked about the children, as I recall she was applying for two school children who were in school during the day. I inquired about her ability to work, to hold employment, had she worked in the past, what type of work had she done, was she working now,

I asked her if she was in good physical health and would be able to work. She replied yes, she said she was not pregnant. As I recall she had worked, I don't remember what type of work, I think it was laundry work or something and she made some remark to the effect that she wasn't anxious to go back to work that she was tired of working. Let's see, I gave her a list of places where she could seek employment, discussed with her the type [279] of work that she might be able to handle, recommended that she check into training at Weir Cook program, where she would be paid during training, she would have income. Let's see, I asked her if she had been to the Township Trustee for assistance, I don't remember what her response was. I don't remember what her income was at the time if there was any.

Q. Did you see her again, was that the only time?

A. That was the only time I saw her.

Q. Did she ever contact you again?

A. No, she never did.

Q. Did you make a recommendation with respect to her receiving assistance for her children?

A. As I recall, let's see, I suggested she first try to find employment, there was more available at that time than there is now and that if she couldn't find some within the very immediate future then that she contact me again or I didn't cut her off completely, I told her to contact me again if she had no success.

Q. Did she contact you again?

A. No, I have not heard from her since.

Q. Did you make a recommendation though that she receive assistance?

A Welfare assistance?

[280] Q. Yes.

A. Trustee?

Q. No, from the Welfare Department?

A. I recommended that the case be denied for lack of six month separation.

Q. Why was the reason you made that recommendation?

A. Well, in this case she was, let's see, I can't remember if she was receiving help from the trustee or not, as I recall I thought there was a possibility she could be working, and she had not utilized, she had not checked into employment at this point and I suggested she do this first and I don't remember all.

Q. Let me ask you this, Mrs. Hartzler, with respect to a case worker in the intake department, have you ever recommended that individuals receive assistance where there is less than a six months period of separation?

A. Yes, on numerous occasions.

Q. What is your policy or practice been with respect to granting or denying an application?

A. Well, first of all I never deny anybody an application. I advise a person they have a right to apply but I always go into the person's situation. What their present income is, what their potential for getting income is, what resources are available to them, their [281] health, the health of the recipient.

Q. Have you ever told an individual, as you recall, they would have to file for divorce before they could file an application?

A. Never.

Q. Before they could receive any assistance?

A. Never.

Q. How about filing for legal separation?

A. Never.

Q. Did I understand then, with respect to a separation, you make a recommendation as to whether you feel they should receive immediate assistance or not, is that right?

A. I didn't understand.

Q. With respect to a case where the parties are separated and they file an application, as I understand it then, you make a recommendation as to whether they should receive assistance immediately, is that right?

A. I can request a waiver of six months separation, is this what you mean, I don't make the ultimate decision.

Q. No, do you make the recommendation?

A. Yes, yes.

Q. What do you take into consideration in making the recommendations?

A. Well, I go into detail with the person in the interview. [282] the initial interview about their situation, are there other resources available to them, other than Public Welfare at this time. Let's see, is there any chance of them getting work, are they in touch with the Township Trustee, is there anything else available to them, like social security benefits or——

Q. You consider their income and what they are receiving?

A. Yes, if they are presently working full time this has bearing.

Q. How about with respect to the bona fide separation, what do you take into consideration?

A. Well, I discuss with them such things as, is this the first time your husband has left, is there history of his coming and going, when was he last home, do you expect him to return, do you hope that he does, just try to get some feeling as to whether this is a bona fide situation or not, in some cases I do contact the milkman, lawn mower cutter, other people involved with this person.

Q. Do you have any situation where the separation has been continuous or the parties have continually separated in the past?

A. I don't understand the question.

Q. Do you have situations where the parties have separated before?

[283] A. Yes.

Q. Short separations?

A. Yes.

Q. You take that into consideration also?

A. Yes, this was the case of Laverne Carter. There was a history of repeated separations and coming together again.

Q. Did you take that into consideration?

A. Yes, certainly.

Q. Do you remember the lady that identified you in the courtroom earlier?

A. Yes, Jean Luke.

Q. Mrs. Hartzler, do you remember anytime telling Mrs. Luke that she could not file an application for assistance?

A. I do not.

Q. You remember at any time telling her she would have to file for divorce before she could file an application?

A. No.

Q. Or that she would have to file for legal separation before filing an application?

A. No.

Q. Do you at any time remember denying her the right to file an application?

[284] A. No.

Mr. Groves: No further questions, Your Honor.
Mr. Cuppy: No questions at this time.

Cross examination

Questions by Mr. John Manning

Q. Mrs. Hartzler, what do you remember about Jean Luke?

A. What do I remember about her?

Q. Yes.

A. I made a visit to her home, I remember that.

Q. You know when you made that visit?

A. No.

Q. Was it this year or last year?

A. Well it had to be since May because I've only been in the intake division since then.

Q. What did you find out?

A. As I recall, she had just come to Indianapolis from Florida, and I believe her husband was incarcerated there. I also remember she had a physical deformity, I believe she has a left arm or right arm that is shrunken and I remember this led me to believe she probably could not find employment easily and she had no income at that point and I recall, unless she was getting help from the Trustee, I can't remember, I requested a waiver of six months separation and to [285] put her on immediately.

Q. Getting back to Laverne Carter, what if Mrs. Carter had been separated for six months instead of, how long has she been separated, your recall?

A. No.

Q. Would that have made any difference in your determination, or your recommendation?

A. I'm not quite sure I understand the question.

Q. She had been separated for less than six months?

A. Yes.

Q. You took action to see she was turned down, am I correct?

A. Well, I didn't feel it was a bona fide separation in that case, I was led to believe there was not.

Q. What if she had been separated for six months?

A. Then the six months separation would not have applied.

Q. That's what I say, what would you have done in that

case, would it have made any difference in your recommendation, would you still have denied?

A. If she had actually been separated six months, it would have been a bona fide separation and I assume she would have been granted assistance, I don't know.

Mr. Manning: I have no other questions.

The Court: Mrs. Hartzler, do I understand [286] you began working in the intake division here at Marion County Welfare in May of this year?

The Witness: Yes.

The Court: May, 1970?

The Witness: Yes.

The Court: If Mrs. Lake said that she applied for public aid in March, 1970, she could not have seen you in the intake division?

The Witness: That's right.

The Court: Any further questions?

Mr. Geddes: I have no further questions.

The Court: Thank you, Mrs. Hartzler.

(Witness excused.)

Wayne Stanton, a defendant, having been first duly sworn, testified as follows:

Direct examination

Questions by Mr. Robert Geddes.

Q. Would you state your full name, please?

A. Wayne Stanton.

Q. What is your, are you the defendant in this law suit, one of the defendants in this lawsuit, Mr. Stanton?

A. Yes, sir.

Q. What is your present business or occupation?

A. Director of the Marion County Department of Public [287] Welfare.

Q. How long have you been in that job?

A. Little over 11 years.

Q. I take it you live in Indianapolis?

A. Yes, Indianapolis, Marion County.

Q. I'm going to get right to the point here, Mr. Stanton. What is the practice, policy and procedure of the Marion County Department of Welfare with respect to the accepting and filing of an application by a person seeking benefits for dependent children?

A. We accept an application on any individual that wishes to file an application for any of our programs.

Q. Where is that done?

A. It's done in either our offices or in their residences or anyplace where the recipient or potential applicant or applicants might be, might be a hospital, might be nursing home, could be anywhere, any number of places.

Q. Now, whom are these applications received by?

A. By the case worker.

Q. What are they done with after that?

A. They are evaluated with respect to the need of the individual and the basic eligibility requirement as established by various statutes and rules and regulations. The case is processed through a several [288] levels of redoing to check the eligibility and make determinations until they come to me with a recommendation and from me they go to the Marion County Welfare Board for a final judgment.

Q. How long a period does this take?

A. Always less than 30 days except where there is a potential medical problem that might have to be evaluated by extensive medical examinations and investigation and reports.

Q. What is taken into consideration with respect to the application of a person who has been separated from their spouse?

A. What is taken into question and consideration?

Q. Yes.

A. Well, you understand and evaluate the need factor, financial need factor and the emergency of this need, therefore the magnitude of the need, whether or not the separation is of a short term or repetitive or continuous or common experience as opposed to a, what appears to be a permanent or bona fide or substantial continuing separation.

Q. Do you have any rule or regulation or practice or policy with respect to the necessity of a person to file complaint for divorce before he can file an application?

[289] A. We have no such requirement.

Q. How about with respect to filing a divorce and receiving any assistance?

A. We have no such requirement, that requires filing of divorce in order to receive assistance or make application for assistance.

Q. How about with respect to filing application with respect to separation?

A. We do not require a filing of separation on, or indiction or statement of separation in order to make application or to receive assistance.

Q. Does the Marion County Welfare Department, do they ever waive the six months requirement?

A. Yes, sir, regularly.

Q. When is that done and under what circumstances?

A. Well, it's done under the circumstances of where there is a financial need of assistance to provide for the basic living necessities of the individual. Also under the circumstances of where the recipient or applicant indicates or the testimony indicates that this separation of this parting is of a lasting permanent nature, although there appears to be considerable hostility in the firmness on the part of the people with whom we are talking about the extent of the separation and permanency of separation and to whether [290] or not the applicant, potential recipient has taken action that would substantiate the severity of the marital problem, family difficulty or the break up.

Q. You mean you take those factors into consideration?

A. They are all evaluated in determining the latter factor, whether or not this is a case of, that would likely appear to be a continuing separation as opposed to a family argument where they might get back together again in a few days, whether or not there is a history of repeated continuous separations or break-ups.

Q. Do you have situations where there is applications filed and the separations are short duration or repetitive?

A. We frequently have them, sometimes they might separate the same day, make application, then they are back the next day.

Q. Now, with respect to financial need, do you have any requirements as to financial need when there is no separation involved?

A. We always have a financial eligibility qualification. All of our public welfare programs are predicated on the financial need basis.

Q. Are these requirements any different from a case of where there is less than six months separation or over [291] six months?

A. No, they are identical.

Q. Now, Mr. Stanton, as I understand it, the case worker makes recommendations as to persons need, and if it is a separation makes recommendations as to whether the separation is bona fide, is that right?

A. That's right.

Q. Have you ever had situations where the case workers have been wrong in their decisions?

A. Yes.

Q. And in any type of situation?

A. Yes, they are not infallible.

Q. Now, Mr. Stanton, what is the procedure followed with the statute and appeal from a decision made by your department?

A. There is a, what we call a proposed action appeal wherein if we are going to reduce or discontinue or change the welfare assistance and grant to a recipient we notify them in advance we are making that change, discontinuance or reduction and give them an opportunity to immediately appeal within the agency before that action is taken and then later another type of an appeal is, if anyone is dissatisfied with any decision of the local department, they are always advised of their rights and privilege to appeal [292] to the State Welfare Department and subsequently if they are dissatisfied the State Welfare Board:

Q. How are they advised of their right to appeal?

A. In writing and verbally.

Q. Now, if a person does appeal, how do they go about appealing?

A. We notify them always if we are going to reduce and to let us know right away within a certain number of days about their desire to appeal and we would set up an immediate appeal. If they wish to appeal from the State Welfare Department they can telephone, or go in, or indicate to the State Welfare Department either in writing or by counsel representing them they desire to appeal.

Q. Are you advised of any individuals that might appeal your decision?

A. We always advise anyone to appeal.

Q. Are you advised of any appeal that any applicant might make?

A. Yes, all the appeals that are filed with the State Department are directed to me.

Q. Mr. Stanton, do your records in any way indicate

Laverne Carter appealed the decision of the Marion County Department of Welfare?

A. Our records indicate she did not appeal.

[293] Q. How about Susan Bowman.

A. Our records indicate she did not appeal.

Q. How about Eva Carter?

A. Our records indicate she did not appeal.

Q. How about Dorothy Enoch?

A. Our records indicate she did not appeal.

Q. And Lucy Hall?

A. Our records indicate she did not appeal.

Q. And Brenda Steele?

A. Our records indicate she did not appeal.

Q. Mr. Stanton, as a welfare, or Director of Marion County Welfare Department, have you ever had a situation whereby the recommendation of the case worker was not followed?

A. Yes, sir.

Q. Have you ever had situations where the case worker might recommend the person is not of need and that was overruled?

A. Yes, sir.

Q. Have you had situations the other way?

A. Yes, sir.

Q. Who makes the final determination as to whether the assistance will be granted to persons?

A. I make a final recommendation to the County Welfare Board, and they, by statute, make the final judgment.

[294] Q. I understand that is done within 30 days?

A. Yes, they receive a, judgment is made and they receive a check or receive a notice from 30 days from the time of application, except where they are permanently and totally disabled, where there are medical problems involved it takes longer process in ascertaining medical information.

Q. Are there any sources available in Indianapolis as far as immediate relief for these individuals to make an application?

A. Yes, there are many, several and private fraternal organizations available.

Q. What are some of those?

A. There's 9 Township Trustee offices, depending on which Township the person in which they might reside, there has been mentioned, Volunteers of America, Salvation

Army, Red Cross, some Catholic Social services, service social Urban League, I think there is some 30—40—70, there is very numerous organizations, many churches we have direct contact with we have a welfare service, regional service in their department sometimes offer immediate direct assistance. We have almost enumerable resources in this area.

Q. As I understand, your department does not give immediate relief, is that right?

[295] A. By statute we are not the, seems we are not the agency to provide immediate assistance, but that is rather delegated to the Township Trustees.

Q. But you do rule on the application within 30 days?

A. Yes, sir.

Q. What can the Trustees provide or do they provide?

A. Trustees can provide anything and any amount they wish to provide.

Q. And money?

A. Money, furniture, food, utility, groceries, school rental, school lunchs, I know of no limitation on anything the Township Trustee can provide.

Q. Do you apply, Marion County Department of public Welfare apply any different standard of need as to those cases where the parents have been separated for less than six months, as opposed to those where separation is over six months?

A. No, we do not, it is the same standard.

MR. GEDDES: I have no further questions, YOUR HONOR.

THE COURT: Counsel.

CROSS EXAMINATION

Questions by MR. CURRY

Q. Although this could be very clear in the record, I want to leave it very clear. In the state of Indiana—

[296] THE COURT: You want to make it crystal clear?

Q. In the State of Indiana, there is no conceivable way that a County Welfare Department, if a person comes in and says my child needs clothes or my child needs food today that this can be done by the County Department, is that correct?

A. Not with tax money.

Q. Is there an agency, a relief giving agency, in the State of Indiana that would deal with this type of problem?

A. Yes, the Township Trustee.

MR. CURRY: No further questions.

CROSS EXAMINATION

Questions by MR. JOHN MANNING

Q. Mr. Stanton, what happened when Tony Davis appealed?

A. I don't recall that Tony Davis did appeal, I have no recollection.

Q. She testified she did, do you have any record?

A. I have no immediate knowledge in my memory about that situation.

THE COURT: You say Tony did?

MR. MANNING: She testified she did.

Q. So you don't know about it?

A. I have no immediate information.

[297] Q. Who do you send to the Township Trustee?

A. Well, enumerable number of people, persons coming to us that might need immediate help and assistance and relief and we refer them to the Trustee. We also refer another large group of persons whom we might not think is receiving enough welfare, because of the statutory limitations here in Indiana, we would refer those persons with a referral and ask the Township Trustees to implement or supplement their welfare assistance.

Q. The Trustee gives them?

A. Where they need the money for school lunches and school rentals and different other kinds, many kinds of service that would appear to be of immediate emergency nature that would fit, according to my understanding into the Trustee's responsibility and program.

Q. Now, I have considerable experience in Michigan and if I can relate Indiana program to that, it's, I'm referring again to the ADC program. Where—

A. What program?

Q. In the state of Michigan they have an ADC program there too and there the County Welfare Department administering the ADC program provide emergency, the State manual provides for emergencies assistance under [298] the AFDC program, would it be possible for Indiana to do that, is it a conscious choice for them not to do that?

MR. GEDDES: We would object to this line of questioning.

THE COURT: Sustained. I have a lot of questions along the same line I'm anxious to ask, but I will hold them in abeyance.

Q. Mr. Stanton, would you favor an extension of the Goldburg-Kelly decided, the last Supreme Court, as to the initial grant to the initial application, that is, there would be a right to a hearing before, let's say, assistance would have to be granted and then a hearing would come later, would you favor that kind of assistance?

THE COURT: I will sustain that. Again we are getting into area philosophical, a legislative which must I think originate from Congress, all through there.

Q. Mr. Stanton, what checks do you have against the fallibility of your case workers?

A. We have an appeal system that is regularly operative and evidence shows it is regularly used.

Q. How long does it take?

A. It's very quick, if it is a matter of an action we are anticipating doing or reducing assistance, or altering [299] assistance, or denying assistance, the action takes place before we do that action, so it precedes any action on our part that might not be pleasurable or agreeable to the recipient.

Q. Let's suppose I go in and I apply for aid and I say I want aid, I have a lot of needs, but I have not been separated from my spouse for six months and then you turn me down because of that, just like the people that testified today, you turn down, let's say I take an appeal immediately, how long would that take for the appeal to be decided, if you know?

A. I'm not sure, it would vary somewhat on the volume of appeals that are pending, but I think it would be, in our county it would be very quick within, I think the appeal would be scheduled within a week or two weeks, something of that nature.

Q. How long would it take for it to be decided?

A. I think we would get an answer back in about two weeks, around that neighborhood.

Q. Would it be correct to say it would take about a month then?

A. Yes.

Q. Is your department bound by the State regulations in the manual?

A. Yes, we are bound by the State rules and regulations [300] and all statutes affecting public welfare, both federal and state level.

MR. MANNING: I don't think I have any further questions. I have one other question.

Q. Mr. Stanton, what does the term exceptional circumstances mean with reference to the Sections 52 1, as used in Burns administrative regulations, section 52 1001 21?

A. Counsel, that means a lot, I could give a long discussion on that but, it means

Q. Could you state it simply, please?

A. As simply as I can. It means that a person has financial need, that there are circumstances that indicates the person's need is going to continue and is of some severity, and as far as basic necessities it means that the needs for this household may be very numerous and of considerable magnitude, but it might be variable, it might involve several types of needs, medical or emotional or academic depravations or social depravation, it could mean many things.

Q. It means a lot of things but nothing in particular?

A. It means all of those things in particular.

Q. You are familiar with Laverne Carter case, are you?

A. Somewhat.

Q. If it made any difference in her case if she had, if everything else was the same only she had been separated [301] from her husband for over six months, would that have made any difference in the determination of her application?

A. Well, it's awfully easy to hypothetically make other kinds of factors relating or bearing on the case. It would be difficult.

Q. Can you answer the question?

A. I can't precisely answer the question unless you tell me what other kinds of factors would be.

Q. I said everything else is the same.

A. Well——

Q. She has been separated from her husband, she has need, her 18 year old boy broke his foot, she doesn't have any income, I don't remember exactly.

A. You might say she doesn't have any income, but I don't know that to be true.

Q. I think she testified to that.

A. I don't remember that precise detail.

Q. You couldn't answer that question then?

A. I could answer the question if you would give me more specifics, and more to go on than to make judgments on individual circumstances and evaluation of them.

Q. I thought you knew something about her case, because you said she had an appeal?

[302] A. I made a special point of ascertaining whether or not these parties had appealed.

Q. You know she had grounds for appeal?

A. I don't know if she had grounds for appeal, I don't know what, I know she did not appeal.

Q. Is that the only thing you looked at her file, whether she appealed, is that the only thing you looked at in her file?

A. No, I looked at many, I looked at many forms and applications and other things in her file.

Q. Why can't you answer the question?

A. Because, mister, I have also looked at files of dozens of other persons too, I can't be sure without refreshing my memory or the case exactly the circumstances of each case, unless I could be sure I would not want to say.

Q. So you won't answer that question?

A. I answered it the best I can.

Q. What would you answer be?

A. What?

Q. To the question I asked.

A. Go back and rephrase the question.

Q. I don't think I want to pursue the question.

Mr. Manning: I don't think I have anything further.

[303] The Court: Did you say you wanted to ask a question?

Re-direct examination

Questions by Mr. Geddes.

Q. Mr. Stanton, on these named plaintiffs in this case, not relating all the facts and everything, is it possible they would have appealed it would have been reversed?

A. Yes.

Q. That is a case where there was an absolute denial, I'm not talking about those of assistance?

A. Yes.

Mr. Geddes: No further questions.

Judge Steckler: Mr. Stanton, is there a particular statutory responsibility on you as the Director of the Marion County Welfare Department to make certain that proof of the need and eligibility for welfare assistance is established?

The Witness: Yes, sir, there is.

Judge Steckler: What is that part of the statute?

The Witness: I can't name the precise statute, it would be referred to in several [304] sections, it relates to the County responsibility of determining the eligibility of person making application for welfare, it says the County Department shall determine the eligibility, and to me that means as the chief administrator, effective officer, have a direct responsibility to see that is done, and we do ascertain the need factor and other factors consistent with whatever the rule and regulation of the statutes are, so we comply with the rules and statutes.

The Court: Mr. Shadel, you wish to ask a question.

Cross examination

Question by Mr. Shadel.

Q. Mr. Stanton, to your knowledge as—strike that please. As I understand it, the individual intake case worker has the power to recommend for whatever reason that an application for AFDC or ADC be granted or denied, is that correct?

A. They have the authority to make a recommendation and the responsibility to make a recommendation within the frame work of the rules and regulations and laws of public welfare, not for whatever reason they might want to. [305] Q. Granted, but I mean the individual case worker, the intake case worker has the power and the duty to make a recommendation that aid be granted or denied in a certain case, is that correct?

A. Yes, consistent with the need formulas, yes, sir.

Q. Now, has, to your knowledge, since appeals do come to you—strike that. Since cases do come to you for final approval or rejection, to your knowledge has a case worker's recommendation that an application for ADC benefits be

denied because of the six months rule, there has been no six months bona fide separation, has such a recommendation ever been overruled by either a supervisor or yourself?

A. Yes.

Q. Do you have any specific cases in mind, you can remember?

A. Not specifically, there has been several.

Q. What would be the policy or the result in this situation. If a woman, if it would be appropriate to deny ADC benefits to a woman because she had not been separated for six months, let's assume that no, nothing changes but for one fact, that one fact is, the woman has now been separated for over six months, what would be the result in that situation?

A. If I understand you are saying that there was no other ramifications at all except a day, from one [306] day to the next day, I would say there would likely be no difference in our recommendation.

Q. So even though a six month—strike that. Even though separation might have lasted over six months, she would still be denied?

A. No, sir.

Q. I'm sorry.

A. If she was in need and the need was there before in your example, she would still be equally eligible.

Q. But she had been denied before because of the six months phase, because she had not validly separated or bona fide separated for six months or longer. Let me try to make myself clear once more. Take an applicant and the recommendation is, she be denied assistance, a narrative reason being no bona fide six months separation and then let's assume that this woman had been separated for six months, then assuming there are no changes other than the fact she has now been separated for six months, what would be the result of her application, would it be denied or approved?

A. Mr. Shadel, that incident comes to me, not per se but just a recommendation.

Q. I'm sorry, can you answer the question, please?

A. I'm trying.

[307] Q. Would it be denied or accepted based on that one factual difference?

A. It never comes to me, I never review the case or make the decision as simply as you state it, it never comes to me per se, or recommend denial or recommend approval, the reasons why they would feel this way are also included and I do not make the recommendations simply on three words or two words, or request denial, it's, you are setting up a hypothetical situation that simply does not exist.

Q. Would not the woman be accepted after a six months separation had existed assuming none of her needs had changed and before when she had not been separated for six months she was eligible as far as her needs were concerned?

A. Would you repeat that?

Q. If a woman is needy financially, but she has not been separated for six months, is not a bona fide six months separation assumed or recommended by the intake case worker, then her application would be denied, generally speaking, is that correct, because there has not been a six months separation?

A. It would depend basically and primarily on the magnitude of her need or evaluation of the hardship per se and not per se on the six months proposition.

[308] Q. What I'm trying to get at, is how the need related to the six months period.

A. Well, it relates to the availability of assistance the Trustees often time know that if a person has been separated for some period of time, it is not their case to help, it would be more likely the Welfare Department's case.

Q. Again I'm talking about need, how is this?

A. It would be that the Trustee stops giving assistance and says I'm not going to give you the assistance I was before.

Q. In your experience as Director of the Marion County Department of Public Welfare, how do you interpret the requirement of the six months separation to the existence or nonexistence of need in ADC applications?

A. We relate it directly to need, to financial need.

Q. How do you do that?

A. We have tables and charts allocating from the State Welfare Department, so many dollars for food, so many dollars——

Q. I'm sorry. Again I don't think I'm making myself

clear or you are not—seems to be some difficulty in communication here. How is the fact that a woman is separated for one month, three months, six months or eight months relative to whether she is in need, [309] whether she has financial eligibility or noneligibility to receive ADC benefits?

A. Well, the length of time she is separated does not per se relate to the financial eligibility of need.

Q. A moment ago you said it had a direct relation.

Mr. Grimes: Your Honor, I object.

The Court: I think we're getting into difficulty because you are arguing with the witness, I know what you're try- to get at, you can pursue it, I'm just as interested in the answer as you are.

Mr. Shadel: I have no further questions at this time.

The Court: I have a simple question, I'll put it in a manner more directly.

Mr. Stanton, as I understand it, all the categories, of which there are five, if my memory is correct, you said the need criteria is identical in all categories?

The Witness: Yes, sir.

The Court: Of course the six months separation that you use can only be used in ADC?

The Witness: That's correct.

The Court: But truly I gather what you [310] have been saying, and you correct me if I have the wrong impression, that instead of saying you really are not in need, in some of these cases you say you have not been separated for six months, because if the need was there——

The Witness: Let me say, sir, that we evaluate all of the resources in the community and in this person's household and the regulation says something about particular hardship of granting assistance, the case workers do make what amounts to adjudge mental evaluation of hardship, which is many times quite apart from the per se dollar amount in this chart.

The Court: What I'm getting at basically and I'm trying to get this same sort of answer. Certainly you can't use six months separation, the aged and blind and crippled obviously you don't. If the need criteria are identical then all categories, it seems to me, it's a little bit unfortunate

that you use this no six months category instead of, really you are not in need.

THE WITNESS: No, sir, because there is another Governmental agency providing assistance, and there has been——

[311] THE COURT: This is the Township, I understand that.

THE WITNESS: That's right and we do not make a judgment as to the adequacy or inadequacy of the Township Trustee assistance.

THE COURT: That is for emergency?

THE WITNESS: Emergency or up to say, six months, or supplemental assistance that can be very well a continuing nature, it does not have to be in a short period of time, there is no time limit, neither is there any amounts of assistance.

THE COURT: I hope not to pursue this too much longer, but the Township category of emergency assistance is also available to all the other categories of public aid?

THE WITNESS: Yes, sir.

THE COURT: Then why single out this one particularly in ADC?

THE WITNESS: Sir, if I could make a comment, there are other timed requirements on old age assistance, the same as there is on ADC or Aid for disabled, there is the age factor of 65, many times people have to wait and get Trustee assistance from 62 to 65 [312] there is an age factor, so almost every program which suggests a time provision there is also a continuing critical point in the blind assistant program here. You don't get assistance in the blind until you reach an exact medical cut off and eligibility determination, prior to that period of time you are the Trustee's responsibility but instantly you reach that point you become the Welfare Department's responsibility.

THE COURT: In other words, what I think you are saying, and you haven't quite said it, is an ADC matter, the primary responsibility belongs on the Township Trustee?

THE WITNESS: For the short term or first part of the need situation.

THE COURT: Probably for the first six months, is that what you are really saying?

THE WITNESS: Unless there is a demonstration that this is going to be continuing kind of program.

THE COURT: Unless, of course, there are signs of bona fide separation?

THE WITNESS: That's right.

THE COURT: Any further questions?

FURTHER RE-DIRECT EXAMINATION

Questions by MR. GEDDES.

[313] Q. As I understand it, we all know you have a six months regulation, except in circumstances of need, as I understand it, in Indiana under this regulation as far as the way of your applying it, if the need is there and appears to be a bona fide separation you waive any six months requirement?

A. That's right.

Q. Which has been demonstrated by some of the testimony of witnesses for plaintiffs and defendants?

A. That's correct.

Q. If there is no need there, then you are not going to grant assistance at that time, is that right?

A. That's correct.

Q. If the need would not be there after the six months separation you still would not grant it at that time?

A. That's correct.

Q. Now, as I understand it, this comes under the social security act, as far as the continued absence, is that right?

A. That's correct.

Q. Of the definition of dependent child?

A. That's correct.

THE COURT: That is all, you may step down.

(Witness excused)

• • • • •

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, SUSAN BOWMAN, EVA CARVER, DOROTHY ENOCK, LUCY HALL and BRENDA STEELE,
each individually, on behalf of their respective minor children, and on behalf of all other similarly situated
Plaintiffs

v.

WAYNE STANTON, Director Marion County Department of Public Welfare, Marion County, Indiana, his agents, employees and successor
WILLIAM STERRETT, Acting Director, Indiana State Department of Public Welfare, his agents, employees and successor

and

ROBERT M. CURLESS, MARION M. HILGER, THE VERY REVEREND MONSEIGNOR W. EDWARD SWEIGARD, ARVELIA M. STANTON, and ROBERT G. WATSON
as members of the Indiana State Board of Public Welfare and their agents, employees and successors
Defendants

NO. IP 70-C-124

ENTRY ON MOTIONS TO DISMISS

November 24th, 1970

Plaintiffs' complaint alleges that the regulation of the Indiana State Department of Public Welfare requiring mothers seeking assistance for dependent children under the program commonly known as A.F.D.C. to file for a divorce or legal separation within six months of the parents' separation to become eligible for aid is violative of the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, and claim federal jurisdiction under

28 U.S.C. §§ 1343(3)(4), 2201 and 2202. Defendants responding thereto filed a motion to dismiss alleging the Court is without jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief can be granted, and that the constitutional claims of plaintiffs are not of paramount importance.

The Court in a preliminary hearing on defendants' motion to dismiss received evidence upon which to resolve the matter. Nine of the plaintiffs' witnesses were heard, all testifying they were informed that no aid would be granted during the six months following their separation from their spouses unless they filed actions for divorce or legal separation. In each instance aid was initially denied by the Marion County Welfare Department. Some of the claimants were later provided with A.D.C. payments. However, emergency assistance was provided to some of the claimants by the Township Trustee as provided under Indiana law.

Certain of the claimants also stated they were refused the opportunity of filing claims because of the six-month separation regulation.

Under Indiana law each claimant is provided with a right to appeal any decision made by the case workers or supervisors at the county level, whether it be a denial of the right to file an application, a denial of assistance after the filing of an application, or dissatisfaction with the amount of the grant. The appeal procedures provide a right to have the decision reviewed by the County Department of Public Welfare and if still dissatisfied with the decision, a second appeal may be had to the State Department of Public Welfare. Only one of the plaintiffs, Toni Davis, testified that she appealed to the County Department. Defendant Stanton, Director of the County Department of Public Welfare, testified the file does not record any appeal taken by plaintiff Davis.

We therefore conclude that none of the plaintiffs appealed the various decisions made at the office level of the County Department. Having so failed to exhaust the administrative appeal procedures provided, we find a failure on the part of the plaintiffs to exhaust their administrative remedies through the state administrative procedures.

We have examined the pleadings before us and find no substantial federal question involved, nor do we find federal jurisdiction under 28 U.S.C. §§ 1343(3)(4), 2201 and 2202.

The motion of defendants to dismiss this complaint for failure of federal jurisdiction is hereby GRANTED.

This case is ordered dismissed.

/s/ Otto Kerner,
By William E. Steckler,
pursuant to Authorization
Judge, United States Court of Appeals
for the Seventh Circuit

/s/ William E. Steckler
United States District Judge

/s/ James E. Noland
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

[*Caption omitted in printing*]

MOTION TO AMEND ENTRY

Defendant Wayne Stanton respectfully moves that the Court enter an order altering, amending and correcting its Entry on Motions to Dismiss of November 24, 1970, in the following respects:

1. The last paragraph on page 2 of the Court's Entry, through oversight, omission or inadvertence, states that the county decision is reviewed by the County Department of Public Welfare and then a second appeal may be had to the State Department of Public Welfare; whereas in fact said Entry should show that the appeal procedures provide a right to have the county decision reviewed by the State Department of Public Welfare and, if still dissatisfied with the decision, a second appeal may be had to the State Board of Public Welfare.

2. The last paragraph on page 2 of the Court's Entry, through oversight, omission, or inadvertence, states that Tony Davis was a plaintiff; that Tony Davis appealed to the County department; and that defendant Wayne Stanton testified that the file does not record any appeal taken by plaintiff Davis. The Entry should show that Tony Davis was a witness and not a plaintiff; that Tony Davis testified that she appealed to the State Department of Public Welfare but not the State Board of Public Welfare; and that defendant Wayne Stanton testified that the file does not record any appeal taken by any of the plaintiffs.

WHEREFORE, this defendant prays that the Court enter an order herein correcting said entry as above requested and for such further proceedings herein as the Court may deem proper.

SMITH and JONES

By: Robert W. Geddes
ROBERT W. GEDDES
Attorneys for defendant Wayne Stanton

[*Affidavit and certificate of service omitted in printing*]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAVERNE CARTER, SUSAN BOWMAN, EVA CARVER, DOROTHY ENOCK, LUCY HALL and BRENDA STERLE,
each individually, on behalf of their respective minor children, and on behalf of all other similarly situated
Plaintiffs

v.

WAYNE STANTON, Director Marion County Department of Public Welfare, Marion County, Indiana, his agents, employees and successor
WILLIAM STERRETT, Acting Director, Indiana State Department of Public Welfare, his agents, employees and successor

and

ROBERT M. CURLESS, MARION M. HILGER, THE VERY REVEREND MONSEIGNOR W. EDWARD SWEIGARD, ARVELIA M. STANTON, and ROBERT G. WATSON
as members of the Indiana State Board of Public Welfare and their agents, employees and successors
Defendants

NO. IP 70-C-124

AMENDED ENTRY
ON
MOTIONS TO DISMISS

This cause came before the Court upon defendant Wayne Stanton's Motion To Amend Entry of November 24, 1970, which motion reads in the words and figures as follows:

(H. I.)

The Court having considered said motion and being duly advised in the premises hereby grants said motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Court's Entry On Motions To Dismiss of November 24, 1970, be and hereby is amended to read as follows:

"Plaintiffs' complaint alleges that the regulation of the Indiana State Department of Public Welfare requiring mothers seeking assistance for dependent children under the program commonly known as A.F.D.C. to file for divorce or legal separation within six months of the parents' separation to become eligible for aid is violative of the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, and claim federal jurisdiction under 28 U.S.C. §§ 1343 (3)(4), 2201 and 2202. Defendants responding thereto filed a motion to dismiss alleging the Court is without jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief can be granted, and that the constitutional claims of the plaintiffs are not of paramount importance.

The Court in a preliminary hearing on defendants' motion to dismiss received evidence upon which to resolve the matter. Nine of the plaintiffs' witnesses were heard, all testifying they were informed that no aid would be granted during the six months following their separation from their spouses unless they filed actions for divorce or legal separation. In each instance aid was initially denied by the Marion County Welfare Department. Some of the claimants were later provided with A.D.C. payments. However, emergency assistance was provided to some of the claimants by the Township Trustee as provided under Indiana law.

Certain of the claimants also stated they were refused the opportunity of filing claims because of the six-month separation regulation.

Under Indiana law each claimant is provided with a right to appeal any decision made by the case workers or supervisors at the county level, whether it be a denial of the right to file an application, a denial of assistance after the filing of an application, or dissatisfaction with the amount of the grant. The appeal procedures provide a right to have the decision reviewed by the State Department of Public Welfare and if still

dissatisfied with the decision, a second appeal may be had to the State Board of Public Welfare. None of the plaintiffs testified that they appealed the county decision. Only one of the witnesses, Toni Davis, testified that she appealed to the State Department of Public Welfare, but not to the State Board of Public Welfare. Defendant Stanton, Director of the County Department of Public Welfare, testified the file does not record any appeal taken by any of the plaintiffs.

We therefore conclude that none of the plaintiffs appealed the various decisions made at the office level of the County Department. Having so failed to exhaust the administrative appeal procedures provided, we find a failure on the part of the plaintiffs to exhaust their administrative remedies through the state administrative procedures.

We have examined the pleadings before us and find no substantial federal question involved, nor do we find federal jurisdiction under 28 U.S.C. §§ 1343(3)(4), 2201 and 2202.

The motion of defendants to dismiss this complaint for failure of federal jurisdiction is hereby GRANTED.

This case is ordered dismissed.

Dated this 11th day of December, 1970.

/s/ Otto Kerner,
By William E. Steckler
pursuant to Authorization
Judge, United States Court of Appeals
for the Seventh Circuit

/s/ William E. Steckler
United States District Judge

/s/ James E. Noland
United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 6744, October Term, 1970

LAVERNE CARTER ET AL.,

Appellants,

v.

WAYNE STANTON ET AL.

ON CONSIDERATION of the motion of the appellant for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

May 24, 1971

SUPREME COURT OF THE UNITED STATES

No. 6744, October Term, 1970

LAVERNE CARTER ET AL.,

Appellants,

v.

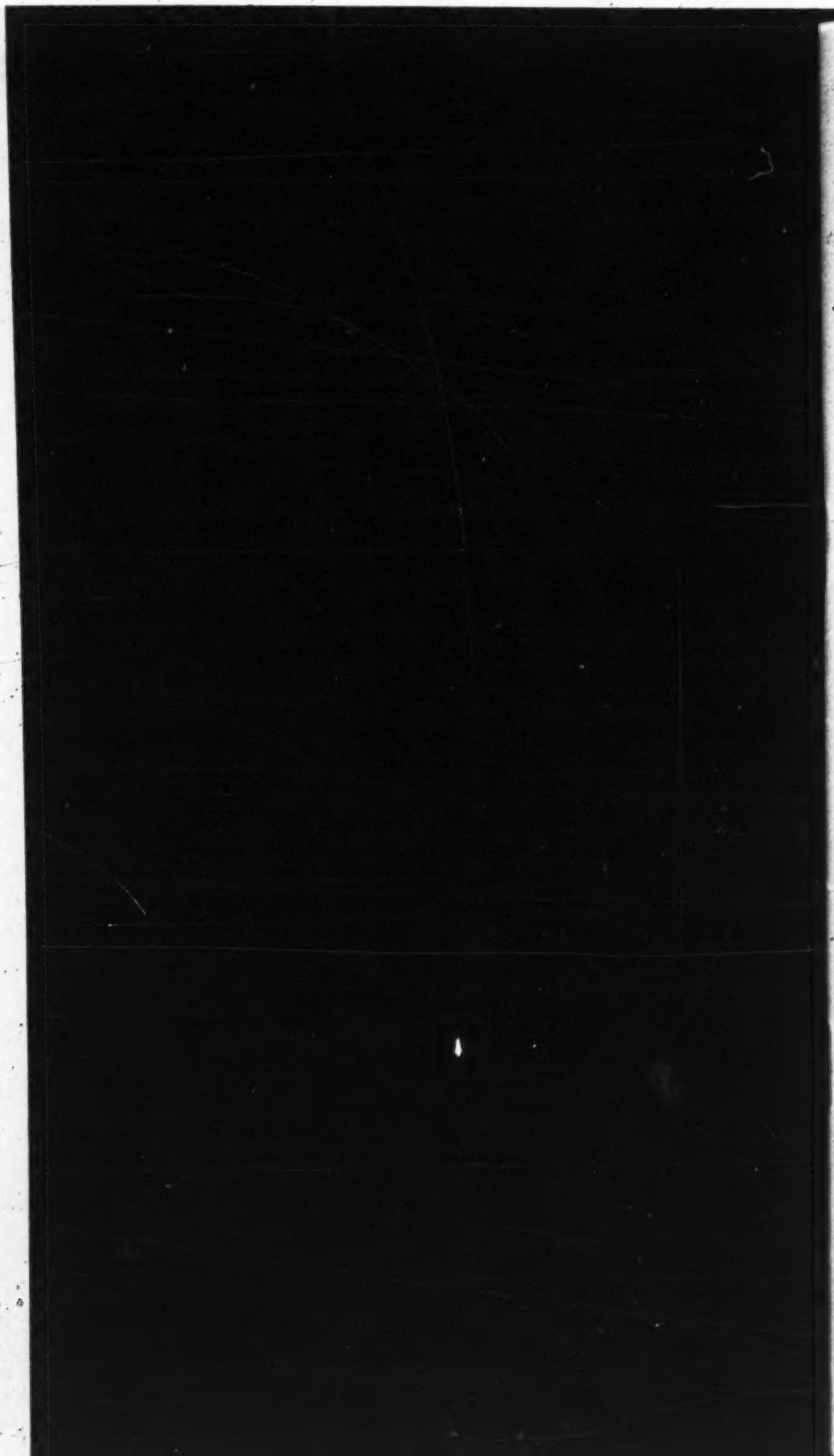
WAYNE STANTON ET AL.

APPEAL from the United States District Court for the Southern District of Indiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

May 24, 1971

☆ U.S. Government Printing Office: 1971—427-385/710



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IN THE

Supreme Court of The United States

OCTOBER TERM 1970

NO. 6744

LAVERNE CARTER, SUSAN BOWMAN, EVA CARVER, DOROTHY ENOCH, LUCY HALL and BRENDA STEELE et al.,
Appellants (Plaintiffs below),

-vs-

WAYNE STANTON, Director Marion County Department of Public Welfare,
WILLIAM STERRETT, Director Indana State Department of Public Welfare, et al.
Appellees (Defendants below).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

APPELLEE'S MOTION TO AFFIRM

The Appellee moves the Court to affirm the judgment of the United States District Court for the Southern District of Indiana, on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to require further argument, Rule 16(1)(c), and on the ground that the decision of the District Court is so patently correct as to warrant no further review. Rule 16(1)(d).

QUESTIONS PRESENTED

1. Whether a substantial federal question is raised by a state welfare regulation which defines "continued absence from the home" by a parent as an absence of at least six months' duration.

2. Whether the three judge District Court properly held that Appellants should have pursued administrative remedies before seeking federal jurisdiction of their claims.

STATUTES AND REGULATIONS INVOLVED

The Social Security Act of 1935 § 406(a); 42 U.S.C. 606(a):

> "the term 'dependent child' means a needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent . . . "

The Indiana welfare regulation involved in this appeal, Board of Public Welfare Reg. 2-402(b), being Burns' Ind. Admin. Rules & Regs. Ann. Sec. 52-1001 (2-b).

> "When the continued absence is due to desertion or separation, the absence shall have been continued for a period of at least six (6) months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and reasons for such action."

ARGUMENT

I

APPELLANTS DO NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

(a). Constitution Considerations: EQUAL PROTECTION

If public assistance has become an unmanageable, ineffective, controversial method of administrating financial aid to needy families, much of the problem emanates from the unclear lines of state and federal responsibility in the field. Welfare is a program with administrative responsibility divided between federal and state and local governments. Administrative problems add to welfare problems, with the States having a substantial and legitimate interest in seeing that local conditions are met.

The crux of this case is whether the establishment of a six month waiting period to determine whether there is a "continued absence" of a spouse is a reasonable answer to the problem of setting up welfare requirements of eligibility, or whether the six month period constitutes an invidious classification in conflict with the equal protection law of the Fourteenth Amendment.

This Court has already demonstrated a sensitivity to the difficulty of administering aid from limited economic resources to an indeterminate class of people. *Dandridge v. Williams,* 397 U.S. 471 (1970). The class of welfare mothers entitled to Aid for Dependent Children has always been difficult to ascertain. Certain abuses such as indiscriminate snooping to find the "substitute father" has been prohibited in the landmark case of *King v. Smith,* 392 U.S. 309 (1967). In *Wyman v. James,* 91 S.Ct. 381

(1971), the court granted the welfare mother the right to have reasonable home visits with notice, but recognized that the right to welfare cannot be unconditional, and therefore upheld the home visit as a prerequisite for welfare eligibility as a rational condition of entitlement. The AFDC program by its inherent imperfections invites abuse and fraudulent claims. The State must have a legitimate interest in limiting fraud, and insuring that every family that goes on AFDC is added to the welfare rolls only after every other means to maintain the family unit has failed. Only after a reasonable period of time can it be predicted with any certainty that every possible means for maintenance has been unsuccessfully employed. The six month waiting period is intended to accomplish just that end. The State has a justifiable concern in seeing that only those properly entitled to welfare be added to the public assistance rolls. Even the six month waiting period is not absolute; it can be bypassed by demonstrating "exceptional circumstances of need" Reg. 2-402(b), or by the welfare mother taking affirmative actions to hold the spouse responsible for the support of his children by either filing for divorce or separation. Thus, there is no distinction or discrimination within the class of women waiting six months for welfare eligibility. And there is always the possibility of gainful legitimate employment occurring.

Furthermore, the local level is the proper place to examine the "exceptional need" criterion which would obtain when the woman cannot wait the six month period and refuses to seek a separation from her husband. Thereby, the children are protected from the intransigent mother.

This court has spelled out with precision the scope of judicial review of a state statute on the subject of welfare

regulation. In *Dandridge v. Williams* at 90 S.Ct. 1161 this Court said:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some reasonable basis it does not offend the Constitution."

The whole system of AFDC may be imperfect, but the State has a legitimate ground for scrutinizing each and every welfare application to see that the public interest is not violated and that the limited economic resources are going to deserving applicants.

> "The agency, with tax funds provided from federal as well as from state sources, is fulfilling a public trust. The State, working through its qualified welfare agency, has appropriate and paramount interest and concern in seeing and assuring that the intended and proper objects of that tax-produced assistance are the ones who benefit from the aid it dispenses." *Wyman v. James*, 91 S.Ct. at 386.

Unfortunately, welfare is used by some to augment their pocket books. The man of the household disappears to place the family on welfare, and suddenly reappears when the welfare checks start rolling in. This abuse is aggravated by the difficulty of getting fraudulent persons off welfare due to the elaborate, timely, and costly procedure to drop a recepient from the welfare rolls as established in *Goldberg v. Kelly*, 397 U.S. 254 (1970). They would logjam the courts while bankrupting the State. What should be involved is a balancing of the State's interest in seeing that the welfare money goes to the truly needy and the individual's interest that he not be subjected to invidious discrimination or overreaching in violation of his freedoms guaranteed by the Bill of Rights.

The crucial language in the *Dandridge* case exposes the fundamental issue and sets up a prudent test in deciding these difficult problems:

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. *But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court.* The constitution may impose certain procedural safeguards upon systems of welfare administration, *Goldberg v. Kelly . . . But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.*" 90 S.Ct. at 1162-1163. (Emphasis added)

In such spirit, the Indiana statutory procedure aims to allocate welfare funds to the truly needy and Indiana officials are doing their best to administer the program. The six month rule, whatever its imperfections, does serve a valid state governmental function. The six month rule does not violate the concept of Equal Protection.

(b). Constitutional Considerations: DUE PROCESS

Appellants argue that because "continued absence" has been defined in Indiana as an absence of six months that they have been denied Due Process of law by a "presumption, which is not supported by any rational connection . . .", p. 9. Yet, can it be realistically said that this rule has no rational basis? The Social Security Act demands that the absence of the parent be a "continued absence." How long is "continued?" This is the question

the state administrators must ask. The loose union which characterizes so many families militates against an easy determination of this factual question. A father who leaves home on a brief soiree is clearly not absent in any "continued" sense. It is common knowledge that some may frequently come and go at odd times, leaving their families for days, weeks, or months. The determination of whether an absence is "continued," in a literal sense, would require impossible surveillance of the home by the welfare department. Thus, it is not unreasonable to set a time period which will serve reliably to establish beyond doubt that the parent is absent in a "continued" sense. As long as the time period has a rational connection to the real problem, it should be upheld, for "the Fourteenth Amendment gives the federal court no power to impose upon the States their views of wise economic or social policy." *Dandridge,* 90 S.Ct. at 1162.

> "We need not explore all the reasons that the State advances in justification of the regulation. It is enough that a solid foundation for the regulation can be found in the State's legitimate interest . . ." 90 S.Ct. at 1162.

The legitimate interests served here are the avoidance of fraud, conservation of the welfare department's staff man-hours, and the avoidance of the necessity of surveillance. The six month period also discourages the avaricious or scheming father from leaving his family because there will be a reasonable interval between the time he leaves and the family's acceptance for AFDC.

The six month period is rationally connected to the real problem: a father who is gone for six months is unlikely to return; he does not slip in on Sunday nights to apoligize.

The mother can file for separation, or if she wishes, divorce, and legally obtain benefits immediately. As a

result of the decision in *Boddie v. Connecticut,* 91 S.Ct. 780 (1971) court costs cannot be charged in a divorce action to one unable to bear them. In Indiana, courts and legal aid agencies provide counsel to poor mothers in divorce or separation actions. The filing of divorce or separation proceedings prior to the end of the six month period merely serves as evidence that the absence of the father will be "continued," and serves the same function as the actual passage of the six month period.

The six month rule cannot be said to be without rational connection between the fact proved and the ultimate fact presumed. If six months has passed, it can be presumed the absence of the parent is "continued." Only "where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them . . ." will the legislation be incompetent. *U.S. v. Romano,* 382 U.S. 136, 139 (1965). The six month rule can hardly be considered violative of the Due Process rights of Appellants.

(c). Statutory Considerations:

The Social Security Act of 1935, § 406 (a), 42 U.S.C. § 606(a), provides, as does the Indiana regulation 2-400(a) that ". . . 'dependent child' means a needy child . . . who has been deprived of parental support or care by reason of the, . . . continued absence from the home . . . of a parent . . ."

Indiana has defined "continued absence" as an absence that continues for at least six months. Board of Public Welfare Reg. 2-402(b).

This is a reasonable method of determining whether an absence is a "continued" absence, and is a reasonable

regulation in effectuation of the terms of the Social Security Act. The six month period is a necessary means for the government to determine whether the departed father has in fact continued his absence. Such a rule avoids the problems associated with caseworker "snooping" and concomitant comprises of the recipients' privacy, which was the subject at issue in *Wyman v. James.*

This Court, in *King v. Smith,* 392 U.S. 309, (1968) described the AFDC program as "a scheme of cooperative federalism." 392 U.S. at 316. This Court also said "there is no question that states have considerable latitude in allocating their AFDC resources . . ." 392 U.S. 318-319. Indiana has acted reasonably within this latitude in requiring that an absence be of six months' duration to constitute a "continued absence." This provision does not breach the statutory obligation to furnish "aid to families with dependent children . . . with reasonable promptness to all eligible individuals . . ." 42 U.S.C. § 602 (a)(9) (1964 ed., Supp. II) for the reason that it simply effectuates the determination of which is an "eligible" family with a continued absence of the breadwinner. The duty to furnish aid promptly attaches only when there is an "eligible" family; if there has not been a continued absence, i.e., absence of six months, there is no eligibility requiring the furnishing of aid under this particular program. Indiana's local poor relief program in all townships assures that no needy persons starve or go without clothing or lodging.

For these reasons the Indiana regulation does not conflict with, but rather, implements the Act with a workable standard reasonably related to the prevention of fraud and which eliminates the need for investigation which may intrude into the area of familial privacy.

Moreover, that the Social Security Act does not itself expressly mandate the six month rule is not dispositive.

This Court dealt with another State regulation which was not required by the Act, but which effectuated it, in *Wyman v. James*. "The home visit, it is true, is not required by federal statute or regulation." 91 S.Ct. at 387. In the main, the federal regulations required only periodic redeterminations of eligibility. 91 S.Ct. 387 at or 6. But this Court held the home visitation regulations of New York as proper, despite the lack of express provision for them in the federal Act. Thus Appellant's contention, p. 10, that "the Social Security Act contains no rigid waiting period to establish a 'continued absence'" does not prohibit a necessary waiting period.

II

APPELLANTS SHOULD HAVE PURSUED ADMINISTRATIVE REMEDIES

The three-judge District Court concluded ". . . That none of the plaintiffs appealed the various decisions made at the office level of the County Department. Having so failed to exhaust the administrative appeal procedures provided, we find a failure on the part of the plaintiffs to exhaust their administrative remedies through the state administrative procedures." (Opinion, p. 3).

The rule that administrative procedures should be pursued before going to federal court is an integral part of the constitutional provision that the judicial power of the United States shall extend only to "cases" and "controversies." Article 3, § 2. A case or controversy may be avoided if the claimant achieves a favorable result by pursuing administrative remedies. A case or controversy is legitimately created only at such time as the claimant receives an unfavorable result by pursuing administrative remedies. Thus we have the general rule that administrative procedures for appeal should be followed prior to seeking federal jurisdiction. *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S. 341 (1951).

In the case of *Monroe v. Pape*, 365 U.S. 167 (1961) this Court held that a plaintiff could sue state officials in federal court under 42 U.S.C. § 1983, alleging unlawful search and seizure, despite availablity of similar remedies under state law. *Monroe* said that 42 U.S.C., § 1983 was available to provide a remedy where state law was inadequate, and to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice. The *Monroe* holding was expanded in *McNeese*

v. Board of Education, 373 U.S. 668 (1963) to a holding that § 1983 provides a remedy "supplementary" to any a state might have. As Justice Harlan wrote in his dissenting opinion in *Damico v. California*, 389 U.S. 416 (1967), the *McNeese* holding was unwise because, on *facts* disclosing an *inadequate* state remedy, the Court broadly held that even where the remedy was adequate, § 1983 required no exhaustion of state remedies. Justice Harlan wrote that under *Damico* the rule would be that there can be no requirement that a person dealing with an administrative agency continue to deal with it in an orderly fashion, no matter how adequate his remedy there, and that the *Damico* holding was an erroneous extension of the *Monroe* doctrine. Unlike *Monroe* and *McNeese*, there is no intentionally or unintentionally inadequate state remedy here. Indiana state law provides the following review procedures:

> "The county department shall at once report to the state department its decision upon each such application for assistance to a dependent child. *If any such application is not acted upon by the county department within a reasonable time after the filing of the application, or if such application is denied, or if assistance previously granted is modified or revoked, the applicant may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such an appeal, give the applicant an opportunity for a fair hearing thereon.* The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigations as it may deem necessary, and shall make such decision relative to the granting of assistance and the amount of the assistance to be granted as, in its opin-

ion, is justified and in conformity with the provisions of this act [chs. 10-14 of this title]. All decisions of the state department made in conformity with the terms of this act shall be binding upon the county department and shall have the same force and effect as decisions of the county department from which appeals are not taken. [Acts 1936 (Spec. Sess.), ch. 3, § 77, p. 12] (Emphasis Added).

To supplement the administration of such appeal, rules of administrative procedure were promulgated by the Board of Public Welfare as authorized by the legislature in *Burns Ind. Stat. Anno.* § 52-1103. *Burns Indiana Rules and Regulations Annotated,* § 52-1246, specifically provides procedure for an appeal from a county department decision and reads as follows:

"(a) If the county department of public welfare refuses to accept an application for assistance to dependent children; or if an application is not acted upon by the county department of public welfare within a reasonable time or within sixty (60) days after the filing of the application; or if an applicant is dissatisfied with the amount of the award; or if an award previously made is modified; *or if any application is denied or revoked, the applicant or recipient may appeal to the state department of public welfare.* Such appeal shall be in writing over the signature or mark of the applicant or recipient and shall be filed with the county or state department of public welfare. *Every applicant or recipient shall be notified of his right of appeal to the state department of public welfare at the time of his application, and concurrently with each grant, denial or modification of award.*

"(b) Upon notice given by the state department of public welfare, the county department of public welfare *shall review the appellant's situation promptly*

and submit a report of the situation to the state department of public welfare. After due investigation and consideration, the state department of public welfare shall notify the appellant and the county department of public welfare in writing of any action taken and any preliminary finding of fact upon the review of the case and of his right to have scheduled a fair hearing in person before a representative of the state department of public welfare. The state department of public welfare shall inform the appellant and the county department of public welfare of the date and place of any hearing.

"(c) Any such fair hearing shall be held at a place convenient to the appellant and shall be conducted by the administrator, the director of the division of public assistance or by any qualified officer or employee of the state department of public welfare duly designated by the administrator or the director of the division of public assistance to hold and make decisions upon such hearings. The hearing shall be informal and shall provide an opportunity for all persons who have pertinent information to be heard promptly. The appellant may be represented by any person of his own choice.

"(d) Within a reasonable time after the conclusion of a fair hearing, the person who conducted the hearing shall report his findings of fact and decision upon the hearing. Such appeal decisions will be based on the law, rules and regulations of the state department of public welfare, and policies officially adopted by the county board of public welfare, and shall be signed by the administrator or the director of the division of public assistance. A copy of the decision shall be sent to the appellant and to the county department of public welfare. The appellant shall also be notified that the state board of public welfare will review his case personally upon his specific request.

"(e) The decision of the state department of public welfare shall be binding upon the county department

of public welfare, *and shall be put into effect immediately* by the county department of public welfare. Such decision does not preclude the county department of public welfare from modifying the award thereafter, under the provisions of the Welfare Act of 1936 [Burns' Stat. §§ 52-1001—52-1417] as amended, to meet changed conditions.

"(f) The appellant may withdraw his appeal at any point in the procedure by submitting a signed request to the state department of public welfare. [Bd. of Public Welfare, Reg. 2-408, adopted Feb. 21, 1946, filed March 27, 1946, eff. Apr. 6, 1946] (Emphasis Added).

Unlike *Monroe* and *McNeese* the review procedures are adequate to enable the plaintiffs below to present their case by appeal. Had they pursued such an appeal and established exceptional need, as provided for in Reg. 402(b), they could have received payments the same as if the six month eligibility period had not expired, and there would be no practical basis for a case or controversy in the federal court.

To the extent that *Damico* holds that welfare claimants can completely ignore available and adequate administrative remedies before proceeding in federal court under the Civil Rights Act, it should be distinguished for the following reasons.

The Appellants rely upon *Damico,* contending that it is not necessary to exhaust state administrative remedies prior to bringing an action under § 1983. But in *Damico* the action brought was to contest *constitutionality* of a state *statute.* The plaintiff in *Damico* was not required to exhaust administrative remedies because the constitutionality of the state statutes requiring a waiting period could not have been ajdudicated in an administrative hear-

ing. Administrative remedies would have been inadequate to handle the plaintiff's constitutional claim. Here, however, it is an Indiana state *regulation* that is being attacked, and an adequate, reasonable administrative remedy was open to Appellants, which they failed to pursue.

Petitioners assert that "the welfare officials made no investigations to determine whether exceptional circumstances of need and bona fide separation were present." (Jur. Statement, p. 9). Yet it is this failure to investigate and the failure to find exceptional circumstances that would qualify Petitioners for aid that could have been reviewed by administrative appeal, had Petitioners bothered to appeal. Their failure to pursue administrative remedies was properly held below as a bar to their claim being heard in federal court. *Metcalf v. Swank,* 305 F. Supp. 785 (N.D. Ill. 1969).

Appellee Sterrett, in order to avoid undue repetition, hereby adopts and incorporates by reference the argument of Appellee Stanton as to the District Court's lack of jurisdiction.

CONCLUSION

Appellees believe the District Court correctly decided the issues below and pray this Court to affirm the judgment of the District Court.

Respectfully submitted,

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IN THE

Supreme Court of The United States

OCTOBER TERM 1970

NO. [illegible] 70-5082

LAVERNE CARTER, SUSAN BOWMAN, EVA CARTER, DOROTHY ENOCH, LILLY SALL and BRENDA STEELE et al,

Appellants (Plaintiffs below),

v.

WAYNE STANTON, Director, Marion County Department of Public Welfare, WILLIAM STERRETT, Director, Indiana State Department of Public Welfare, et al,

Appellees (Defendants below).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

APPELLEE WAYNE STANTON'S MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of The United States

OCTOBER TERM 1970

NO. 6744

LAVERNE CARTER, SUSAN BOWMAN, EVA CARVER, DOROTHY ENOCH, LUCY HALL and BRENDA STEELE et al,
Appellants (Plaintiffs below),

v.

WAYNE STANTON, Director, Marion County Department of Public Welfare,
WILLIAM STERRETT, Director, Indiana State Department of Public Welfare, et al,
Appellees (Defendants below).

On Appeal From The United States District Court For The Southern District Of Indiana, Indianapolis Division

APPELLEE WAYNE STANTON'S MOTION TO DISMISS OR AFFIRM

Appellee Wayne Stanton moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the United States District Court for the Southern District of Indiana, on the grounds that the questions presented are so unsubstantial as not to require further argument and that the decision of the District Court is so patently correct as to warrant no further review.

STATUTE AND REGULATION INVOLVED

The Social Security Act of 1935 § 406(a); 42 U.S.C. § 606(a), defines the term "dependent child" as follows:

> "The term 'dependent child' means a needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, . . ."

The Indiana regulation under attack is Public Welfare Regulation 2-402(b) [Burns' Indiana Admin. Rules and Regulations (52-1001)-2(b)], which regulation reads as follows:

> "When the continued absence is due to desertion or separation, the absence shall have been continued for a period of at least six (6) months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and reasons for such action."

QUESTIONS PRESENTED

1. Whether a substantial Federal question is raised by the quoted Indiana Welfare Regulation which uses a six-month continuous absence of a parent as a condition for assistance, but which also contains an exception allowing immediate assistance within that period under exceptional circumstances of need and where it is determined that the absence of the parent is actual and bona fide.

2. Whether the Appellants should have exhausted their available administrative remedies before seeking relief in the Federal Court.

CRUCIAL FACTS

(a)

Concerning "Continued Absence"

The Appellants claim that Indiana State Board of Public Welfare Regulation 2-402(b) is unconstitutional because, they allege, it requires a six-month separation of parents before assistance may be granted dependent children and allows undue discretion in determining who may file an application. The Appellants also claim that the practice of the Marion County Department of Public Welfare requires a parent to file for legal separation or divorce before the parent's children may receive assistance and refuses the filing of an application by persons who have not yet proved an actual and bona fide separation.

Contrary to the implications in the Appellants' statement of the case and the Appellants' claim, the record discloses that the policy and practice of the Marion County Department of Public Welfare requires acceptance of an application for any individual who wishes to file, and that each of the named Appellants was granted the right to file, and did file, an application for AFDC assistance.

The record reveals that, in practice, AFDC assistance is granted if the need exists and the continued absence of a parent is found to be actual and bona fide, without awaiting a six-month absence *or* the filing of a petition for divorce or separation. Filing for separation or divorce is only one of the many relevant factors bearing upon whether the continued absence is actual and bona fide. Thus, Appellant Lucy Hall received assistance effective less than three months after she separated from her hus-

band, yet she *never* filed for divorce or separation. The six-month period in the regulation under attack is waived regularly by the Marion County Department of Public Welfare when the need exists and the absence is actual and bona fide.

(b)

Concerning "Need"

In determining need and eligibility, the County Department considers all relevant factors including whether the applicant is receiving assistance from other agencies or sources during the interim waiting period. Each named Appellant who requested interim assistance from the Township Trustee received such assistance in various forms. There was no evidence that Appellee Stanton or any of his agents acted arbitrarily or capriciously or that the Appellants suffered irreparable harm. Instead, the record establishes that the regulation is applied according to uniform standards and tests of need. The measure of need in cases of actual and bona fide absence is the same regardless of the duration of the absence.

(c)

Concerning "Administrative Remedies"

No administrative appeals were taken from the Marion County Department of Public Welfare's determination although such administrative procedure was available and known to the Appellants or their attorneys. Such appeals are heard within one or two weeks and a decision rendered within the following two weeks.

ARGUMENT

I

NO SUBSTANTIAL FEDERAL QUESTION INVOLVED

Neither the regulation under attack nor its application presents any substantial federal question.

(a)

The Regulation

Regulation 2-402(b) *does not necessarily* withhold assistance while awaiting expiration of the six-month period of absence. There is no rigid waiting period under the Indiana regulation which would make it unreasonable, unconstitutional or inconsistent with the Social Security Act. The regulation, instead, authorizes immediate assistance at any time after application if circumstances of need exist and if the absence is actual and bona fide. Surely, this is not unreasonable. As stated by the three-judge court in the rehearing in *Damico v. California*, 2 Pov. L. Rep. § 10,478 (N.D. Calif. 1969):

> "We hold that under the Social Security Act, the state may not deny AFDC benefits to otherwise eligible children by means of a *conclusive presumption* that an absence is not 'continued' before the expiration of three months. *In so ruling, we do not hold that the state may not set up a reasonable time period as a rebuttable evidentiary guide to determine what constitutes a 'continued absence' in the absence of other factors. The state correctly argues that 'continued absence' cannot be attained in an instant but must endure for some period.* Conversely, however, the 'con-

> tinued' nature of the absence may be apparent, in an appropriate case, from the very early days of the separation. Protection of the needy children deprived by such an absence is required by the Federal Act. We hold only that the Department of Social Welfare must, in passing upon an application for Aid to Families with Dependent children, consider all relevant facts in determining whether the particular absence is 'continued.' " [Emphasis added].

The Indiana regulation differs materially from the regulations attacked in *Doe v. Hursh,* 2 Pov. L. Rep. § 11,753 (D. Minn. 1970) and *Damico v. California,* supra, upon which the Appellants depend.

In *Damico,* the regulation prohibited aid prior to three months of continued absence unless legal action was taken to terminate the marriage or the parent was deported or incarcerated. The quoted "conclusive presumption" which flawed the California regulation is missing from the Indiana regulation. This clearly differentiates the two.

In *Doe,* the Minnesota statute created an irrebuttable presumption that separation for less than three months was not "continued absence from home." No evidence was permitted by which this presumption could be overcome. Children were ineligible even if the absent parent had left permanently or had been ordered out of the house in a divorce action. The Indiana regulation contains no such rigid prohibitions but, on the contrary, flexibly permits *immediate* assistance.

The Indiana regulation has a reasonable basis and does not offend the constitution. The majority of the Court in *Dandridge v. Williams,* 397 U.S. 471, 90 S. Ct. 1153 (1970) laid down reasonable and practical guides protecting the interests of both the state and the recipient in the administration of public welfare (90 S. Ct. at page 1158):

". . . that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." Id., at 318-319.

"Congress was itself cognizant of the limitations on state resources from the very outset of the federal welfare program. The first section of the Act. 42 U.S.C. § 601, provides that the Act is

> 'For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services *as far as practicable under the conditions in such State,* to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . .'

"Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds . . ." [Emphasis added]

• • •

"In the area of economics and social welfare, a State does not violate the Equal protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78.

"The problems of government are practical ones and may justify, if they do not require, rough accommo-

dations—illogical, it may be, and unscientific." *Metropolis Theatre Co. v. City of Chicago,* 228 U.S. 61, 69-70. "*A Statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.*" *McGowan v. Maryland,* 366 U.S. 420, 426. [Emphasis added]

• • •

"We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But *the intractable economic, social and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration,* Goldberg v. Kelly, ante. *But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf.* Steward Mach. Co. v. Davis, 301 U.S. 548, 584-585; Helvering v. Davis, 301 U.S. 619, 644. *The judgment is reversed.*" [Emphasis added].

(b)

Application of Regulation

The record establishes that the Indiana regulation is applied according to uniform standards and tests. Moreover, in order to afford the applicants practical protection from a mistaken decision of a case worker and to assure constitutional application of the regulation, procedural safeguards are available. Under Indiana law each claimant under the AFDC program is provided the right to appeal

any decision made by the case workers or supervisors at the county level, whether it be a denial of the right to file an application, denial of assistance after the filing of an application, or dissatisfaction with the amount of the grant. *Burns' Ind. Stat. Ann.* § 52-1246.

Absence for six months is not a mandatory condition for assistance under the Indiana regulation. The exception contained in the regulation provides for determination only that the absence is actual and bona fide. Assuming need is found, "a child may be considered immediately eligible" upon a special finding that the absence of the parent is actual and bona fide.

Contrary to the Appellants' claim, a petition for separation or divorce is not a prerequisite to receiving assistance where the absence of the parent is less than six months. Many factors are examined and considered, including whether the separation is of a short term, or repetitive, or continuous, or a common practice, or a casual absence—or, on the contrary, is actual and bona fide. The record establishes that the six-month period is waived regularly.

In conclusion, both in its language and in its application, the Indiana regulation violates no constitutional or federal standard. It is flexible, and its application is reasonable and gauged by determined relevant factors of need and eligibility. The regulation deserves a construction of constitutional validity in accordance with the "well known doctrine that a statute [and equally a regulation] is to be construed as constitutional when such construction is possible." *Metcalf v. Swank* 293 F. Supp. 268 (N.D. Ill. 1968); *Harmon v. Brucker,* 355 U.S. 579, 581, 78 S. Ct. 433, 2 L. Ed. 2d 503 (1958).

II

APPELLANTS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES

Administrative remedies must be exhausted before seeking extraordinary equitable relief when the pursuit of administrative remedies might ordinarily render judicial determination of the issues unnecessary. *Chicago Automobile Trade Association v. Madden*, 328 F. 2d 766 (7th Cir. 1964), *cert. denied* 377 U.S. 979 (1964); *Metcalf vs. Swank*, 305 F. Supp. 785 (N.D. Ill. 1969); *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S. 341 (1951). This is especially so when there is no substantial federal question involved and the administrative remedy is adequate and speedy.

The Appellants' contention that they were not required to exhaust their state administrative remedies for the reason that they were asserting a violation of their civil and constitutional rights is answered in *Metcalf v. Swank*, 305 F. Supp. 785 at page 788 (N.D. Ill. 1969):

> "The plaintiff contends that she need not exhaust the administrative remedies provided by Illinois law because she is asserting a violation of her civil and constitutional rights, and federal jurisdiction is invoked under 28 U.S.C. § 1343. It is the plaintiff's contention that in all cases where federally protected rights are allegedly violated by a state administrative agency, a complainant may bypass the orderly procedures established by that agency, the procedures for review of the agency's actions established by state law, and sue its officers in a federal court at any stage. This court does not agree.
>
> "*The rule that administrative proceedings must be exhausted prior to resort to judicial relief has been consistently recognized by the Supreme Court.* E. g.,

Alabama Public Service Commission v. Southern Railway Co., 341 U.S. 341, 71 S. Ct. 762, 95 L.Ed. 1002 (1951); Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U.S. 752, 67 S. Ct. 1493, 91 L. Ed. 1796 (1947). Recently, the Supreme Court has exempted actions brought under the Civil Rights Act from the exhaustion requirement under certain conditions. McNeese v. Board of Education, 373 U.S. 668, 83 S. Ct. 1433, 10 L.Ed]d 622 (1963); Damico v. California, 389 U.S. 416, 88 S. Ct. 526, 19 L.Ed.2d 647 (1967), Houghton v. Shafer, 392 U.S. 639, 88 S. Ct. 2119, 20 L.Ed2d 1319 (1968); King v. Smith, 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed2d 1118 (1968). *However, this court does not read the foregoing decisions as giving civil rights plaintiffs the unqualified right to bypass state administrative remedies.* Not one of the decisions relied upon by the plaintiff presented a situation where there was a speedy, viable state administrative remedy which the plaintiff could have pursued. Under the particular circumstances presented in each case, pursuance of administrative procedures would have been futile. Such is not the case here. the defendants administer a statute constitutional on its face. That statute has built in procedural safeguards, and provides for a speedy determination of administrative appeals. The plaintiff may pursue her administrative appeals without undergoing deprivation of the public assistance funds she presently receives. It is purely speculative at this point whether or not the plaintiff would receive an exception to the shelter allowance maximum if she pursued her administrative remedies. [Emphasis added].

Likewise, as stated by the Court in *Eisen v. Eastman*, 421 F. 2d 560 at page 569 (2nd Circuit 1969), which dealt with the exhaustion of state administrative remedies in a civil rights case:

[13] Despite the breadth of some of the language, particularly in the *Damico* per curiam, we thus read

these decisions as simply condemning a wooden application of the exhaustion doctrine in cases under the Civil Rights Act. Exhaustion of state administrative remedies is not required where the administrative remedy is inadequate, as in *McNeese*, or where it is certainly or probably futile, as in *Damico*, *Smith* and *Houghton*. A quite different situation would be presented, for example, when a complaint alleged that a subordinate state officer had violated the plaintiff's constitutional rights by acting because of bias or other inadmissible reasons, by distorting or ignoring the facts, or by failing to apply a constitutional state standard, and the state has provided for a speedy appeal to a higher administrative officer, as New York City has done here. *We shall need much clearer directions than the Court has yet given or, we believe, may turn their backs on state administrative remedies and rush into a federal forum, whether their actions fall under the Civil Rights Act or come under general federal question jurisdiction.*
Affirmed. [Emphasis added]

Neither the Appellants here nor their lawyers sought the available administrative remedies, although the record reveals that after the filing of an appeal a hearing is scheduled within a week or two and decided approximately two weeks later.

Burns' Ind. Stat. Ann. § 52-1246 provides in pertinent part:

"The county department shall at once report to the state department its decision upon each such application for assistance to a dependent child. *If any such application is not acted upon by the county department within a reasonable time after the filing of the application, or if such application is denied, or if assistance previously granted is modified or revoked, the applicant may appeal to the state department in*

the manner and form prescribed by the state department. The state department shall, upon receipt of such an appeal, give the applicant an opportunity for a fair hearing thereon. The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. . ." [Emphasis added].

To supplement the administration of such appeal, rules of administrative procedure were promulgated by the Board of Public Welfare as authorized by the legislature in *Burns' Ind. Stat. Ann.* § 52-1103. *Burns Indiana Rules and Regulations Annotated* § 52-1246 specifically provides procedure for an appeal from a county department decision and its pertinent part reads as follows:

"(a) If the county department of public welfare refuses to accept an application for assistance to dependent children; *or* if an application is not acted upon by the county department of public welfare within a reasonable time or within sixty (60) days after the filing of the application; *or* if an applicant is dissatisfied with the amount of the award; *or* if an award previously made is modified; *or* if any application is denied or revoked, the applicant or recipient may appeal to the state department of public welfare. Such appeal shall be in writing over the signature or mark of the applicant or recipient and shall be filed with the county or state department of public welfare. *Every applicant or recipient shall be notified of his right of appeal to the state department of public welfare at the time of his application, and concurrently with each grant, denial, or modification of award.*

"(b) Upon notice given by the state department of public welfare, the county department of public welfare *shall review the appellant's situation promptly* and submit a report of the situation to the state de-

partment of public welfare. After due investigation and consideration, the state department of public welfare shall notify the appellant and the county department of public welfare in writing of any action taken and any preliminary finding of fact upon the review of the case and of his right to have scheduled a fair hearing in person before a representative of the state department of public welfare. The state department of public welfare shall inform the appellant and the county department of public welfare of the date and place of any hearing.

"(c) Any such fair hearing shall be held at a place convenient to the appellant and shall be conducted by the administrator, the director of the division of public assistance or by any qualified officer or employee of the state department of public welfare duly designated by the administrator or the director of the division of public assistance to hold and make decisions upon such hearings. The hearing shall be informal and shall provide an opportunity for all persons who have pertinent information to be heard promptly. The appellant may be represented by any person of his own choice.

"(d) Within a reasonable time after the conclusion of a fair hearing, the person who conducted the hearing shall report his findings of fact and decision upon the hearing. Such appeal decisions will be based on the law, rules and regulations of the state department of public welfare, and policies officially adopted by the county board of public welfare, and shall be signed by the administrator or the director of the division of public assistance. A copy of the decision shall be sent to the appellant and to the county department of public welfare. *The appellant shall also be notified that the state board of public welfare will review his case personally upon his specific request.*"
[Emphasis added].

"(e) The decision of the state department of public welfare shall be binding upon the county department

of public welfare, *and shall be put into effect immediately* by the county department of public welfare. Such decision does not preclude the county department of public welfare from modifying the award thereafter, under the provisions of the Welfare Act of 1936 [Burns' Stat. §§ 52-1001—52-1417] as amended, to meet changed conditions.

"(f) The appellant may withdraw his appeal at any point in the procedure by submitting a signed request to the state department of public welfare. [Bd. of Public Welfare, Reg. 2-408, adopted Feb. 21, 1946, filed March 27, 1946, eff. Apr. 6, 1946]." [Emphasis added].

It is obvious from the foregoing that Indiana provides a speedy and adequate remedy which the Appellants could and should have pursued.

III

INTERIM RELIEF BY TOWNSHIP TRUSTEE

The record reveals that the Township Trustee has a statutory duty to provide immediate assistance pending the processing of AFDC applications. In fact, of the five named Appellants who testified at the preliminary hearing, all except one were receiving interim assistance from the township trustee. The one exception, Appellant Steele, admitted that she had no problems as far as need was concerned. These facts refute the appellants' dramatic description of their plight and illustrate that relief in Indiana is available during any interim period while waiting AFDC assistance from the county welfare department. *Burns' Ind. Stat. ann.* § 52-144 provides:

"The township trustees of the several townships of this state shall be ex officio the *overseers of the poor within their respective townships, and shall perform*

all duties with reference to the poor of their respective townships that may be prescribed by law. Every township trustee shall, in discharging the duties prescribed in this act [§§ 52-144-52-176, 52-177-52-181], be designated an overseer of the poor. [Acts 1935, ch. 116 § 1, p. 432]." [Emphasis added]

As "overseer of the poor" the Township Trustee is required to perform the following duties as provided in *Burns' Ind. Stat. Ann.* § 52-148:

> "The overseer of the poor in each township *shall have the oversight and care of all poor persons* in his township so long as they remain (in) a charge, and shall see that they are properly relieved and taken care of in the manner required by law. *He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions;* and shall also see that such medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished. The township trustee may, in cases of necessity, authorize the payment from township poor relief funds for water, gas and electric services, including the payment of delinquent bills for such services, when necessary to prevent their termination or to restore terminated service. He may, in cases of necessity, authorize the payment from township poor relief funds for lunches furnished to any child by the school in which the child attends classes, whenever the parent or other person responsible for such child is found to be financially unable to pay for such lunches. . . ." [Emphasis added].

Where temporary and immediate assistance is needed, *Burns' Ind. Stat. Ann.* § 52-150 *provides:*

> "Whenever an overseer shall ascertain by investigation that any poor person or persons or family require

assistance, he shall furnish to them such temporary aid as may be necessary for the relief of immediate and pressing suffering; before any further final or permanent relief in any case is given, the overseer shall consider whether distress can be relieved by other means than an expenditure of township funds . . ."

CONCLUSION

By reason of the foregoing Appellee Wayne Stanton respectfully submits that the decision of the three-judge Federal Court from which this appeal has been taken should be dismissed or, in the alternative, that said appeal should be affirmed in all things without further review.

Respectfully Submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~6744~~ 70-5082

LAVERNE CARTER, et al.,

Appellants,

v.

WAYNE STANTON, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6744

LAVERNE CARTER, et al.,

Appellants,

v.

WAYNE STANTON, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the United States District Court for the Southern District of Indiana, consisting of its Amended Entry on Motions to Dismiss, is unreported.

JURISDICTION

The judgment of the District Court was entered on November 24, 1970, and amended on December 11, 1970, and notice of appeal was filed in that court on January 19, 1971. This appeal was docketed on March 16, 1971, and

probable jurisdiction was noted and appellants' motion for leave to proceed in *forma pauperis* was granted on May 24, 1971. The jurisdiction of the Supreme Court to review the District Court decision by direct appeal is conferred by 28 U.S.C. § 1253. → denial of interlocutory or perm. injunction by 3 judge court.

QUESTIONS PRESENTED

1. Whether substantial constitutional and federal questions are raised by a challenge on equal protection, due process, right of privacy and statutory grounds to a state regulation and practice which defines "continued absence" in such a manner as to deny AFDC benefits to children whose parents have been separated for less than six (6) months, except where undefined exceptional circumstances of need are present or where the parent having custody of the child files an action for divorce or legal separation.

2. Whether welfare claimants in an action under 42 U.S.C. § 1983 seeking to enjoin and declare invalid on constitutional and statutory grounds a state regulation and practice which defines "continued absence" in such a manner as to deny AFDC benefits to children whose parents have been separated for less than six (6) months, except where undefined exceptional circumstances of need are present or where the parent having custody of the child files an action for divorce or legal separation, are required to exhaust state administrative remedies.

3. Whether a federal district court has jurisdiction under 28 U.S.C. § 1343 of an action brought pursuant to 42 U.S.C. § 1983 seeking to enjoin and declare invalid on constitutional and statutory grounds a state regulation and practice resulting in denials of AFDC benefits.

STATUTES INVOLVED

The following regulations, statutes and constitutional provisions are set forth in Appendix A hereto:

(1) Regulations pertaining to dependent children: Indiana State Board of Public Welfare Regulations 2-400 and 2-402, Burns Ind. Admin. Rules & Regs. (52-1001)-1 and (52-1001)-2 (1967).

(2) Statute and regulation pertaining to administrative appeals: Acts 1936 (Spec. Sess.), ch. 3, § 77, p. 12, Burns Ind. Stat. Ann. § 52-1246 (1964), and Indiana State Board of Public Welfare Regulation 2-113, Burns Ind. Admin. Rules & Regs. (52-1211)-1 (1970).

(3) Provisions of the Social Security Act of 1935: § 402 (a)(10), 49 Stat. 627, 42 U.S.C. § 602(a)(10), and § 406 (a), 49 Stat. 629, 42 U.S.C. § 606(a).

(4) Statutes governing the basis of the action and the jurisdiction of the District Court: 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) and (4).

(5) Provisions of the Constitution of the United States: Amendment I, Amendment IV and Amendment XIV, Section 1.

Appendix B hereto contains a table which cross-references all sections of Burns Indiana Statutes Annotated cited herein to the corresponding sections of the Indiana Code of 1971.

STATEMENT

1. *The Statutory Framework.* The Aid to Families with Dependent Children (AFDC) program is one of the categorical public assistance programs established by the Social Security Act of 1935. 49 Stat. 620 *et seq.*, 42 U.S.C. § 301 *et seq.*[1] The Act authorizes federal support of state assistance to needy children when the children have been deprived

[1] A comprehensive discussion of the background and scope of the AFDC program is found in *King v. Smith*, 392 U.S. 309 (1968).

of the care or support of one or both parents through death, physical or mental incapacity, or continued absence from the home. The state of Indiana has elected to participate in this program[2] and has provided by statute that "assistance shall be given * * * to any dependent child * * *." Acts 1936 (Spec. Sess.) ch. 3, § 71, p. 12; Ind. Stat. Ann. § 52-1240 (1964). The Indiana State Board of Public Welfare, in its Regulation 2-400(a), has adopted the federal definition[3] that:

> "For the purpose of administration of assistance to dependent children, a dependent child means a needy child * * * who has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent, and whose relatives liable under the law for his support are not able to provide adequate care or support for such child without public assistance * * *."

Under Indiana law, an application for assistance for a dependent child is made to the county department of welfare of the county in which the child resides. Acts 1936 (Spec. Sess.), ch. 3, § 73, p. 12; Ind. Stat. Ann. § 52-1242 (1964). Upon receipt of such an application, the county department is directed to conduct an investigation of the circumstances of the child, including a visit to the home of the child and to the person having custody of the child. Acts 1936 (Spec. Sess.), ch. 3, § 74, p. 12; Ind. Stat. Ann. § 52-1243 (1964). A determination is then made of the eligibility of the child for assistance, the amount of which, giving due regard to the resources and necessary expenditures of the family and the conditions in each case, must be sufficient to provide the child "with a reasonable subsistence compatible with decency and health, taking into considera-

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[2] Acts 1936 (Spec. Sess.) ch. 3, § 14, p. 12; Ind. Stat. Ann. § 52-1113 (1964).

[3] Social Security Act of 1935 § 406(a); 49 Stat. 629; 42 U.S.C. § 606(a).

tion all needs essential to the well-being of the child." Acts 1936 (Spec. Sess.), ch. 3, § 72, p. 12; Ind. Stat. Ann. § 52-1241 (1969 Supp.). The county department is authorized periodically to reconsider the circumstances of a dependent child, and it may modify, cancel, revoke or suspend the assistance. Acts 1936 (Spec. Sess.), ch. 3, § 78, p. 12; Ind. Stat. Ann. § 52-1247 (1964). Each applicant is provided with a right to appeal any decision made by the case workers or supervisors at the county level, whether it be a denial of the right to file an application, a denial of assistance after the filing of an application, or dissatisfaction with the amount of the grant. Acts 1936 (Spec. Sess.), ch. 3, § 77, p. 12; Ind. Stat. Ann. § 52-1246 (1964). Appeals may be taken to the State Department of Public Welfare, and, thereafter, to the State Board of Public Welfare. Indiana State Board of Public Welfare Reg. 2-[illegible]3; Burns Ind. Admin. Rules & Regs. (52-1211)-1 (1970 Supp.).

The concept of "continued absence from the home" is not defined in the Social Security Act of 1935. The HEW Handbook of Public Assistance Administration § 3422.2 (1968) recommends "that no period of time be specified as a basis for establishing continued absence as an eligibility factor." Indiana State Board of Public Welfare Reg. 2-402 (b), Burns Ind. Admin. Rules & Regs. (52-1001)-2 (1967), adopted February 21, 1946, establishes such a time period, as follows:

> "When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six [6] months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and reasons for such action."

2. *Proceedings Below.* On February 27, 1970, appellants ("claimants") filed their complaint (App. 5) in the United States District Court for the Southern District of Indiana challenging the validity of Indiana State Board of Public Welfare Regulation 2-402(b) and the statewide practices thereunder on constitutional and statutory grounds and asking for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201. The jurisdiction of the court was invoked under 28 U.S.C. § 1343(3) and (4). Claimants alleged that they are mothers whose children were rendered destitute through desertion or separation of the father. Each alleged that she applied for AFDC payments to the Marion County Department of Public Welfare and that she was denied either (a) the right to complete and file an application form, or (b) the grant of assistance. Claimants stated that the denial in each instance was on the ground that the mother must be separated from her husband for six months or file for divorce or legal separation before her children may receive AFDC benefits. Claimants contended that Regulation 2-402(b) and the practices thereunder are invalid in the following respects: (1) the six-month waiting period constitutes an irrational and arbitrary classification unrelated to the purposes of the AFDC program which violates the equal protection clause of the Fourteenth Amendment; (2) the exception contained in the regulation is permissive in nature and, hence, on its face grants an arbitrary and unlimited discretion to the county departments of public welfare in violation of the due process and equal protection clauses; (3) the regulation, as applied, in effect enacts an arbitrary and conclusive presumption which denies applicants an opportunity to prove their qualification for benefits in violation of due process of law; (4) the practice of requiring applicants to file for divorce or legal separation infringes their rights under the First, Fourth and Fourteenth Amendments and, in conjunction with the Indiana residency requirements for filing for divorce or legal separation, impairs their constitutional right to travel; and (5) the regulation is inconsistent with the Social Security Act of 1935 and is,

therefore, invalid and unenforceable. In addition, although not expressly set forth in their complaint, claimants contend that the admitted practice of referring applicants for AFDC benefits to the Indiana township trustees for general welfare relief during the first six months of a separation and of denying AFDC benefits on that basis (App. 202-204), which practice is urged by appellees ("defendants") as a justification for the six-month rule, is itself contrary to the Social Security Act of 1935.

Each of the defendants filed a motion to dismiss the complaint. (App. 18-19) The primary grounds of these motions were (1) lack of subject matter jurisdiction, and (2) failure to state a claim upon which relief could be granted. Defendants alleged in support thereof that claimants had failed to exhaust state administrative remedies and that their complaint failed to raise substantial constitutional questions. A three-judge court was convened, and a hearing on these motions was held on November 23, 1970, at which the following testimony was adduced:

A. *Filing of AFDC Applications.* The claimant Lucy Hall (App. 158) and the witness-applicants Marthena Tanner (App. 70), Sandra Watkins (App. 80) and Jean Luke (App. 91) each testified that she was denied the right to complete and file an application for AFDC benefits on the ground that she had either to be separated for six months or file for legal separation or divorce. The witness-attorney Charles Dieter testified that between February 1969 and September 1970 he stated to the welfare department that he was going to file for divorce or legal separation for approximately 100 persons in order that such persons would be allowed to apply for AFDC benefits (App. 40) and, to the best of his knowledge, he never "represented a person who had the six months waived for them without a divorce or legal separation." (App. 46). This testimony conflicts with the testimony of the defendant Stanton that the Marion County Welfare Department has no policy that requires filing for divorce or separation in order to make application for assistance (App.

191) and with the testimony of defendants' witnesses Ernest McGruder (App. 49, 64), Keith Eugene Carver (App. 176) and Lois Hartzler (App. 187).

B. *Denial of Aid.* The claimants Susan Bowman (App. 115-116) and Lucy Hall (App. 156) and the witness Jean Luke (App. 91-92) each testified that she was denied AFDC benefits on the ground that she had either to be separated from her husband for six months or file for legal separation or divorce. The claimant Bowman filed four applications for assistance before she was finally granted aid six months after her separation. (App. 118) The witness Luke also began receiving aid six months after her separation. (App. 92) The claimant Laverne Carter and the witness Tony Davis each stated that she was denied aid on the basis of the six months' rule (App. 100, 129), and the form of denial sent to Carter was admitted into evidence as plaintiffs' Exhibit 1. Although the defendant Stanton denied that there was any policy conditioning the grant of aid on the filing of a complaint for divorce or separation (App. 192), defendants do not deny that this is a factor which they consider in determining whether a separation is bona fide. (App. 179, 192).

C. *Statewide Practices.* Counsel for claimants offered into evidence certain depositions of persons residing in the state of Indiana in counties other than Marion County for the purpose of proving "a general state wide application or misapplication of the regulation and of a wide spread policy requiring applicants to initiate actions for divorce or legal separation as a condition to receiving aid." (App. 166) This motion was never ruled upon by the District Court. (App. 166).

D. *Waiver of Six Months' Rule.* Defendants' witness McGruder testified that a random study indicated that 30-34 waivers of the six months' rule had been granted in a six month period. (App. 52-53) He recognized that such waivers must be based on exceptional circumstances, but was unable to define the term. (App. 55) He later testified

that the standard of need is the same for a person who has been separated for less than six months as for one who has been separated for a longer period. (App. 59) Defendants' witness Carver testified that "if there is undue hardship or need then the six months separation can be waived." (App. 176) Upon cross-examination, he was unable to define "undue hardship" except to state that "if a woman has nine children and no means of supporting herself, that is an undue hardship" (App. 180) and that pregnancy is a common ground for waiver. (App. 181) He declared that, in cases of hardship, need takes priority over the question of bona fide separation. (App. 183) The defendant Stanton initially testified that the standard of need is identical regardless of the duration of the separation. (App. 192) On cross-examination, he declared that the term "exceptional circumstances"

> "means that a person has financial need, that there are circumstances that indicates the person's need is going to continue and is of some severity, and as far as basic necessities it means that the needs for this household may be very numerous and of considerable magnitude, but it might be variable, it might involve several types of needs, medical or emotional or academic depravations or social depravation, it could mean many things." (App. 198)

He further testified that the case workers do make a mental evaluation of hardship "which is many times quite apart from the per se dollar amount in this chart." (App. 203)

E. *Assistance from Township Trustee.* The defendant Stanton, in response to questioning by the Court, testified that the primary responsibility for the first six months of a separation belongs to the Township Trustee. (App. 204) The six-month period, thus, is related to the availability of assistance from the Trustees, and the need arises when the Trustee "stops giving assistance and says I'm not going to give you the assistance I was before." (App. 202) The defendant Stanton further stated that "we do not make a judgment as to the adequacy or inadequacy of the Township Trustee assistance." (App. 204).

During the first six months the claimant Bowman was separated from her husband, she received from the Township Trustee a weekly $15.00 grocery order. (App. 116) After her fourth application for AFDC benefits was granted, she began receiving $125.00 per month in such benefits. (App. 118) The witness Watkins received a $21.00 food order and one month's rent from the Trustee. (App. 81) She began receiving AFDC benefits three months after her separation in the amount of $200.00 per month. (App. 84) The witness Luke began receiving AFDC benefits in the amount of $125.00 per month six months after her separation. (App. 93) Prior to that time, she received food stamps from the Trustee. (App. 92).

F. *Administrative Appeal.* None of the claimants exercised her right to appeal the denial of benefits by the Marion County Welfare Department. (App. 194) The only witness to take an administrative appeal was Tony Davis, (App. 100), and her appeal was unsuccessful. The witness McGruder testified that "I don't think they stipulate what they [appeals] are based on" and that he did not remember reading any decisions "where any quotes have been made * * * relative to the constitution." (App. 62)

3. *Judgment of the District Court.* On November 24, 1970, the District Court entered its order (App. 206) dismissing claimants' complaint "for failure of federal jurisdiction." The Amended Entry on Motions to Dismiss (App. 210) was entered on December 11, 1970. In pertinent parts, the orders are identical, and the basis of the Court's action is stated as follows:

> "We therefore conclude that none of the plaintiffs appealed the various decisions made at the office level of the County Department. Having so failed to exhaust the administrative appeal procedures provided, we find a failure on the part of the plaintiffs to exhaust their administrative remedies through the state administrative procedures.
>
> "We have examined the pleadings before us and find no substantial federal question involved, nor

do we find federal jurisdiction under 28 U.S.C. §§ 1343(3)(4), 2201 and 2202." (App. 212)

SUMMARY OF ARGUMENT

Claimants urge that the constitutional and statutory issues raised by their complaint are neither obviously without merit nor clearly unsound. There is a substantial constitutional question as to the validity of the six-month rule under the equal protection clause since "exceptional circumstances of need" are required to obtain a waiver. In addition, this provision is attacked as violative of the Social Security Act of 1935 and the HEW regulations since aid thereunder must "be furnished with reasonable promptness to all eligible individuals" and since neither sanctions such a waiting period. Furthermore, the six-month rule grants a standardless and arbitrary discretion to the welfare administrators, and, in those cases where adequate investigations are not made, it enacts a conclusive presumption which is void under the due process clause. The alleged practice of requiring applicants to file for legal separation or divorce to secure a waiver of the six-month rule is attacked as contrary to the basic civil right of marriage, to the First Amendment and to the constitutional right of travel. It also conflicts with the goal of the Social Security Act "to help maintain and strengthen family life." Finally, claimants urge that the admitted policy of placing primary responsibility on the Township Trustee for relief during the initial six months of a separation is itself contrary to the Social Security Act. The foregoing questions, not being insubstantial, are adequate to support federal jurisdiction.

Since claimants are proceeding under 42 U.S.C. § 1983, the decisions of this Court indicate that they are not required to exhaust state administrative remedies. Section 1983 provides a remedy that is "supplementary" to any state remedy where, as here, important federal questions are involved. In addition, exhaustion is not required where the state remedy is inadequate and futile. The state admin-

istrative remedy herein has many inadequacies, and the evidence demonstrates that any pursuit thereof would be futile. Moreover, the general policy considerations which underlie the exhaustion requirement have no relevance in this case.

Since the complaint raises substantial constitutional questions, the District Court had jurisdiction under 28 U.S.C. § 1343(3). Welfare rights are "personal rights" within the *Hague* distinction, and the District Court had pendent jurisdiction over the statutory claims. Even if the complaint fails to raise substantial constitutional questions, however, the court had jurisdiction of the substantial statutory issues under §§ 1343(3) and (4). The Social Security Act is a law "providing for equal rights," and, more importantly, the legislative history indicates that, despite the differences in language, the scope of § 1343(3) was intended to be co-extensive with the actions authorized by § 1983. Thus, § 1343(3) provides jurisdiction for all causes of action under § 1983. Furthermore, jurisdiction over statutory welfare claims exists under § 1343(4) since both the Social Security Act and § 1983 itself are acts "providing for the protection of civil rights."

ARGUMENT

I.

THE COMPLAINT PRESENTS SUBSTANTIAL CONSTITUTIONAL AND FEDERAL QUESTIONS SINCE THOSE QUESTIONS ARE NEITHER CLEARLY UNSOUND NOR FRIVOLOUS.

In dismissing the complaint in this action, the District Court did not resolve the merits of any of the attacks made by claimants upon Regulation 2-402(b) of the Indiana State Board of Public Welfare. It found, based on the pleadings and the evidence introduced at the November 23 hearing, that those questions were insubstantial. The issue before this Court, therefore, is not the ultimate disposition of the constitutional and statutory questions raised by the com-

plaint, but whether those questions are of sufficient substance to support federal jurisdiction.

The principles to be applied in appraising the substantiality of the questions involved herein are well-defined by the decisions of this Court. Lack of substantiality appears only when a question "is obviously without merit or * * * its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject," *Water Service Co. v. Redding*, 304 U.S. 252, 255 (1938), or prior decisions render the claim "frivolous." *Bailey v. Patterson*, 369 U.S. 31, 33 (1962). Claimants submit that it is plain that neither of these criteria are applicable to the substantive issues of this case.

A. Substantial Questions Are Presented With Respect to the Validity of Regulation 2-402(b) on its Face.

Claimants challenge the validity of Regulation 2-402(b) on its face, as well as the practices thereunder. The purpose of the AFDC program is to provide support for all needy children who have been deprived of parental support or care by reason of continued absence from the home. Indiana State Board of Public Welfare Reg. 2-400, Burns Ind. Admin. Rules & Regs. (52-1001)-1 (1967). Continued absence from the home may arise from desertion or separation of a parent, incarceration of a parent or service of a parent in the armed forces. Dependent children in each of these three classes may be equally needy and equally deprived of the care and support of a parent, but Indiana denies aid to children in the first of these classes until six months has elapsed, unless *exceptional* circumstances of need are present and it is determined that the separation is actual and bona fide.[4] Thus, the effect of the six-month rule is to

[4]There is a durational requirement of three months where the absence is due to incarceration, unless the sentence equals 90 days or more. The county authorities may waive this requirement however, without finding exceptional circumstances of need. There is no

create two classes of needy children indistinguishable from each other except for the duration of the separation of the father. *Cf. Shapiro v. Thompson*, 394 U.S. 618 (1969). This is vividly demonstrated by the testimony of the claimant Bowman and the witness Luke in this case, each of whom was denied benefits until the six-month period elapsed and each of whom then began receiving aid. Such a classification bears no reasonable relation to whether a child in fact is deprived of parental care and support. Rather, for applicants who cannot establish exceptional circumstances of need, the denial of benefits falls most heavily upon those whose separation is genuine and who, therefore, can least endure the denial of benefits for six months. For these reasons, claimants submit that Regulation 2-402(b), on its face, constitutes an arbitrary denial of the equal protection of the laws under the Fourteenth Amendment, even under a test which searches only for rationality and invidious discrimination. *Dandridge v. Williams*, 397 U.S. 471, 487 (1970). The state concerns of preventing fraud and assuring that separations are continued do not justify such a broad and over-inclusive denial of benefits, *Shapiro v. Thompson*, 394 U.S. 618, 631, 636 (1969), *King v. Smith*, 392 U.S. 309, 325-327 (1968), in lieu of adequate investigations by the welfare authorities.[5]

durational requirement where the absence is due to service in the armed forces. Indiana State Board of Public Welfare Reg. 2-402(c) and (d), Burns Ind. Admin. Rules & Regs. (52-1001)-2 (1967).

[5] That such investigations can be made is evident from the many "waivers" for exceptional circumstances testified to by defendants' witness McGruder, in each of which a finding that the separation was actual and bona fide was presumably made in accordance with Rule 2-402(b). In fact, the Indiana Public Assistance Manual sets forth in some detail the exact procedures to be followed, Section III-C-6 B2 of which provides:

> "Absence of a parent because of desertion, abandonment, or separation shall have been continuous for a period of at least six months prior to the date of application.
>
> "Under exceptional circumstances of need and where it is determined that the absence of a parent is bona fide an

Claimants also assert that the six-month requirement, on its face, violates the Social Security Act of 1935 and the regulations thereunder in three respects. Section 402(a)(10) of the Act, 49 Stat. 627, 42 U.S.C. § 602(a)(10), requires that "aid to families with dependent children * * * be furnished with reasonable promptness to all eligible individuals * * *." Regulation 2-402(b) obviously thwarts this Congressional mandate. This conclusion was reached in *Doe v. Hursh*, 2 Pov. L. Rep. ¶ 11,753 (D. Minn. 1970), in which the court held that the Minnesota three-month durational presumption was contrary to this section. In addition to the requirements of § 402(a)(10) of the Act, 45 C.F.R. § 206.10(3), 36 Fed. Reg. 3864 (1971), requires that decisions on applications be made within 30 days and that the assistance check or notification of denial of assistance be mailed within that period. The present case, therefore, is not unlike this Court's recent decision in *California Department of Human Resources Development v. Java*, 39 U.S. L. Week 4491 (March 27, 1971), in which it was held that a provision of the California Unemployment Insurance Code violated the command of 42 U.S.C. § 503(a)(1) that state unemployment compensation programs must "be reasonably calculated to insure full payment of unemployment compensation when due."

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application may be filed and a child considered immediately eligible upon a special finding of the county department setting forth the facts and reasons for such actions. For this special finding, the county department shall determine that the parent is absent from the home from visits to the home, court records, records of another agency, reports from neighbors, or correspondence; shall determine that need exists according to the Standards for Requirements and that there are no resources of any kind including assistance from relatives; and shall determine that there are no resources in the community to meet this need, from records of the township trustee and other community agencies."

Secondly, there is a substantial question as to the validity of the "exceptional circumstances of need" criterion under § 406(a) of the Social Security Act, 42 U.S.C. § 606(a). Under that section, any "needy" child who meets the dependency requirements is entitled to aid. There is no federal authority for the imposition of a higher standard of need on children whose parents have been separated for less than six months.

In addition, § 406(a) contains no waiting period, rigid or otherwise, to establish a "continued absence." Nor is such a provision found in the interpretation of the "continued absence" requirement by the Department of Health, Education and Welfare. See 45 C.F.R. § 233.90(c)(iii), 36 Fed. Reg. 3868 (1971). The HEW Handbook of Public Assistance Administration, Pt. IV, § 3422.2 (1968) provides:

> "3422.2. Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care under the following circumstances:
>
> 1. When the parent is out of the home;
>
> 2. When the nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
>
> 3. When the known or indefinite duration of the absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.
>
> A child comes within this interpretation if for any reason his parent is absent, and this absence interferes with the child's receiving maintenance, physical care, or guidance from his parent, and precludes the parent's being counted on for support or care of the child. For example: The child's father has left home, without forewarning his family, and the mother really does not know why he left home, nor when or whether he will return."

Section 3422.5 of the HEW Handbook recommends that "no period of time be specified as a basis for establishing

continued absence as an eligibility factor" for the reason that "absence which causes deprivation of parental care or support may be detrimental to the child when a parent has departed only recently." The HEW interpretation recognizes that it is the nature of the absence under all the surrounding circumstances that determines whether the absence is "continued." On this basis, following the reversal and remand of this Court in *Damico v. California*, 389 U.S. 416 (1967), the three-judge court held California's three-month waiting period invalid.[6] *Damico v. California*, 2 Pov. L. Rep. ¶ 10,478 (N.D. Calif. 1969). In the light of the foregoing provisions and decisions, a substantial question is raised as to the validity of the Indiana regulation under federal law.

Claimants challenge Regulation 2-402(b) on its face in yet another respect. Since there is no requirement in the Regulation that an investigation be conducted in each case to determine if an absence is actual and bona fide and if exceptional circumstances of need are present and since, even where such a determination is made, the authorities are given discretion as to whether to accept an application for filing,[7] it is contended that the administrators are granted a standard-less and arbitrary discretion which encourages and has permitted a capricious and invidious discrimination between persons allowed to apply for and receive welfare benefits and those denied applications or benefits. The testimony of defendants' witnesses demonstrates that among the welfare officials themselves there is uncertainty and confusion as to the meaning and application of the "exceptional circumstances" test. In those cases where an adequate

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[6] The California statute provided that no aid could be granted for a separation of less than three months. The regulation interpreted the statute to allow aid prior to the expiration of three months when legal action had been taken to terminate the marriage, or when a parent had been deported or incarcerated.

[7] Reg. 2-402(b) provides that in such circumstances "an application *may* be filed and a child *may* be considered immediately eligible * * *." (Emphasis added).

investigation is not made, furthermore, the effect of the regulation is to enact a conclusive presumption that separation for less than six months cannot constitute deprivation of parental care and support by reason of continued absence from the home. Such a conclusive presumption, as the HEW interpretation itself demonstrates, is not rational and is, therefore, void under the due process clause of the Fourteenth Amendment. *United States v. Romano*, 382 U.S. 136, 139 (1965); *Heiner v. Donnan*, 285 U.S. 312, 325 (1932). Again, the foregoing questions are neither obviously without merit nor frivolous.

B. Substantial Questions Are Presented as to the Validity of the Alleged Practice of Requiring Applicants to File for Legal Separation or Divorce to Secure a Waiver of the Six-Month Rule.

There is a substantial conflict in the evidence with respect to whether the Marion County Welfare Department has a policy or practice within the six-month period either (1) of denying persons the right to complete and file an application or (2) of denying assistance unless the mother files for divorce or legal separation. Claimants have alleged (App. 11) and testified that such a practice is followed, and the question was not resolved by the District Court as a matter of ultimate fact. Claimants submit that a full trial of this case is required to determine this factual issue, but that, for the purpose of determining if substantial legal questions are presented by claimants' allegation, such policy and practice must be deemed to exist.

Claimants urge that a practice of requiring applicants seeking AFDC benefits within the six-month period to file for divorce or legal separation invades their right of privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965), and their basic civil right of marriage, *Boddie v. Connecticut*, 401 U.S. 371 (1971), *Loving v. Virginia*, 388 U.S. 1, 12 (1967), since it forces them either to alter their marital status or to

encounter severe economic deprivation. Applicants of the Catholic faith must, in addition, choose either to act contrary to their religion or to subject their children to six months of deprivation. In the absence of a compelling state interest, the First Amendment to the Constitution of the United States prohibits the imposition by the state of any such arbitrary condition on the free exercise of religion. *Sherbert v. Verner*, 374 U.S. 398 (1963). Moreover, this practice, in conjunction with the Indiana residency requirements for the filing of divorce actions or actions for legal separation,[8] abridges and violates the equal protection rights and the right to travel of applicants who have not satisfied those requirements.[9] *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Claimants further assert that this practice is contrary to § 401 of the Social Security Act of 1935, one of the purposes of which is "to help maintain and strengthen family life * * *." 49 Stat. 627, 42 U.S.C. § 601. A requirement that encourages legal separation or divorce cannot be harmonized with this policy. Section 3422.5 Pt. IV, of the HEW Handbook of Public Assistance Administration (1968), for example, provides as follows:

> "It is recommended that State agencies not deprive children of their right to assistance by interposing as an additional eligibility factor a requirement that, before eligibility on a basis of continued absence can be determined, (a) legal action be taken against an absent parent * * *. Agency regulation * * * should not deprive a parent of the prerogative, exercised by

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[8] Indiana law requires that a petitioner for divorce or legal separation shall have been a resident of the state for one year and a resident of the county for six months preceding the filing of the petition. Acts 1873, ch. 43, § 7, p. 107, Ind. Stat. Ann. § 3-1203 (1968); Acts 1903, ch. 48, § 4, p. 114, Ind. Stat. Ann. § 3-1231 (1968).

[9] Claimant Susan Bowman alleged that she had not met these residency requirements at the time she was initially denied AFDC benefits. (App. 6).

> other members of the community, to arrive at decisions in accordance with his own best judgment. Conditions requiring that legal action be taken against an absent parent before eligibility can be established deflect agency practice from the objective of the aid to dependent children program. Because these conditions interpose barriers to establishing eligibility, the very need for assistance brings external pressure upon parents to take decisive steps (such as court action against a spouse) before they have had an opportunity to arrive at decisions according to their best judgment. Legal action taken by the parent to meet the agency's conditions may result in additional strains in relationships within the home, or may unwisely force the permanent severance of relationships with the absent parent. It is recommended, therefore, that the decision of one of the parents to assume parental responsibility without seeking support from the absent spouse, not be a barrier to receipt of aid to dependent children, if the children are otherwise eligible."

Thus, while legal action voluntarily undertaken by one parent against the other may be one relevant factor in determining whether there is a continued absence, any regulation or practice which encourages such legal action or makes it a prerequisite to the receipt of assistance is not permitted under the federal Act.

C. A Substantial Question Is Raised as to the Validity of the Admitted Policy of Placing Primary Responsibility on the Township Trustee for Relief During the Six-Month Period.

The defendants seek to justify the Indiana six-month regulation on the ground that assistance during this period is available from the Township Trustee and that needy families are not entitled to pick and choose from what agency they will receive relief. The Indiana township trustees are "overseers of the poor within their respective townships,"

Acts 1935, ch. 116, § 1, p. 432, Ind. Stat. Ann. § 52-144 (1964), and are authorized to provide medical and surgical assistance, pay for utility services and school lunches, Acts 1935, ch. 116, § 5, p. 432, Ind. Stat. Ann. § 52-148 (1968 Supp.), and to furnish temporary aid for the relief of immediate and pressing suffering. Acts 1935, ch. 116, § 7, p. 432, Ind. Stat. Ann. § 52-150 (1964).

The defendant Stanton has testified herein that the primary responsibility for the first six months of a separation belongs to the Township Trustee. (App. 204) In his opinion, need and deprivation under the federal Act arise only when the Trustee stops giving assistance. (App. 202) However, he admits that the welfare authorities "do not make a judgment as to the adequacy or inadequacy of the Township Trustee assistance." (App. 204) That such assistance is totally inadequate, when compared with the AFDC benefits available and actually paid, is conclusively demonstrated by the testimony of the claimant Bowman (App. 116) and of the witnesses Watkins (App. 81) and Luke (App. 92).

Defendants ask us to read the federal Act as if it incorporated the Indiana poor relief program as part of a unitary system and provided that, so long as any relief is available from the Trustee, regardless of its adequacy, there is no need sufficient to support the grant of AFDC benefits. The Social Security Act of 1935, of course, sanctions no such policy. It seems plain, therefore, that the welfare authorities have abdicated their responsibilities to needy children for the sake of administrative convenience. Far from justifying or supporting the six-month rule, the reliance placed on the Trustee merely raises substantial, independent federal questions which demand resolution.

II.

CLAIMANTS WERE NOT REQUIRED TO EXHAUST STATE ADMINISTRATIVE REMEDIES SINCE THEIR ACTION IS UNDER 42 U.S.C. § 1983 AND SINCE SUCH STATE REMEDIES ARE INADEQUATE.

The decisions of this Court establish that Section 1983 provides a cause of action independent of any and all state remedies. In *Monroe v. Pape*, 365 U.S. 167 (1960), the Court declared that one complaining of unlawful search and seizure by state officials could sue them in a federal court under 42 U.S.C. § 1983, notwithstanding the availability of similar remedies under state law. In *McNeese v. Board of Education*, 373 U.S. 668 (1963), it was held that the plaintiffs did not have to pursue and exhaust state administrative remedies before bringing their federal action. The majority, following the conclusion reached in *Monroe* (365 U.S. at 183) declared that § 1983 provides a federal remedy that is "supplementary" to any state remedy. (373 U.S. at 672) Although the inadequacy of the state remedy was an alternative ground of decision, *McNeese* makes it clear that the duty of a district court in an action pursuant to § 1983 is to decide the issues on the merits. The Court reiterated this principle in *Damico v. California*, 389 U.S. 416 (1967), a case which is remarkably similar to the present one. *Damico* was an action by welfare claimants under the Civil Rights Act attacking a California statute and regulation requiring that as a prerequisite for AFDC benefits, unless a suit for divorce had been filed, the desertion or separation of the father be of at least three months' duration. The District Court dismissed the complaint for failure to exhaust state administrative remedies, and this Court, without considering the adequacy or inadequacy of those remedies, held in a *per curiam* opinion that no exhaustion was required.

Defendant Sterrett has attempted to distinguish *Damico* on the ground that it involved the constitutionality of a state statute, rather than a state regulation, and that, therefore, its validity could not have been adjudicated in an

administrative hearing. This distinction is not based on any of the Court's language in the *Damico* opinion. More importantly, it is completely without sanction in the later decisions of this Court, which are directly to the contrary. The facts in *Houghton v. Shafer*, 392 U.S. 639 (1968), were that certain legal materials were confiscated from the petitioner-prisoner by the prison authorities pursuant to prison *rules*. Pennsylvania provided several levels of administrative appeals in such a case, up to the state Attorney General. The petitioner did not take any administrative appeal, but filed an action in the federal district court pursuant to 42 U.S.C. § 1983. In holding that exhaustion was not required, this Court in its *per curiam* opinion stated:

> "As we understand the submission of the Attorney General of Pennsylvania in this Court, the rules of the prison were validly and correctly applied to petitioner; these rules are further said to be strictly enforced throughout the entire correctional system in Pennsylvania. In light of this it seems likely that to require petitioner to appeal to the Deputy Commissioner of Correction, the Commissioner, or to the Attorney General would be to demand a futile act. In any event, resort to these remedies is unnecessary in light of our decisions in *Monroe v. Pape*, 365 U.S. 167, 180-183; *McNeese v. Board of Education*, 373 U.S. 668, 671; and *Damico v. California*, 389 U.S. 416." (392 U.S. at 640-41).

Similarly, in *King v. Smith*, 392 U.S. 309 (1968), the constitutionality of Alabama's substitute father *regulation* was attacked. In refusing to require any exhaustion of state administrative remedies, the Court stated (392 U.S., n. 4 at 312):

> "We reject appellants' argument that appellees were required to exhaust their administrative remedies prior to bringing this action. Pursuant to the requirement of the Social Security Act that States must grant AFDC applicants who are denied aid 'an opportunity for a fair hearing before the State agency,' 42 U.S.C. § 602(a)(4) (1964 ed., Supp. II),

> Alabama provides for administrative review of such denials. Alabama Manual for Administration of Public Assistance, pt. I, § II, pp. V-5 to V-12. Decisions of this Court, however, establish that a plaintiff in an action brought under the Civil Rights Act, 42 U.S.C. § 1983, 28 U.S.C. § 1343, is not required to enhaust aministrative remedies, where the constitutional challenge is sufficiently substantial, as here, to require the convening of a three-judge court. *Damico v. California*, 389 U.S. 416 (1967). See also *McNeese v. Board of Education*, 373 U.S. 668 (1963); *Monroe v. Pape*, 365 U.S. 167, 180-183 (1961). For a general discussion of review in the federal courts of state welfare practices, see Note, Federal Judicial Review of State Welfare Practices, 67 Col. L. Rev. 84 (1967)."

The substantiality of the constitutional challenges presented by claimants has been heretofore demonstrated. In such circumstances, the vast majority of the lower federal courts have construed the above cases as recognizing an absolute exemption under § 1983 from any exhaustion requirement.[10] There is a strong policy behind a flat no-exhaustion rule for welfare cases under § 1983 since the legal questions presented, as here, are essentially federal.[11]

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[10] See, for example, *Cooper v. Laupheimer*, 316 F. Supp. 264 (E.D. Pa. 1970); *Rodriguez v. Swank*, 318 F. Supp. 289 (N.D. Ill. 1970), affirmed, 39 U.S.L. Week 3533 (June 8, 1971); *Westberry v. Fisher*, 309 F. Supp. 12 (D. Maine 1970); *Gold v. Lomenzo*, 304 F. Supp. 3 (S.D. N.Y. 1969), reversed on other grounds 425 F.2d 959 (2d Cir. 1970); *Jenkins v. Georges*, 312 F. Supp. 289 (W.D. Pa. 1969); *Russo v. Shapiro*, 309 F. Supp. 385 (D. Conn. 1969); *Whitner v. Davis*, 410 F.2d 24 (9th Cir. 1969); *Anderson v. Burson*, 300 F. Supp. 401 (N.D. Ga. 1968).

[11] One commentator has found that "most of the successful section 1983 cases present simple fact situations with a clear issue of federal law requiring limited, if any, evidentiary hearings." Chevigny, *Section 1983 Jurisdiction: A Reply*, 83 Harv. L. Rev. 1352, 1355 (1970).

Not only are the federal courts likely to be more familiar with these questions than are the state welfare agencies and courts, but federal interpretation will lead to a more uniform application of the Social Security Act throughout the nation. Accordingly, there is no important state-law interest in having state administrative remedies resorted to first. Even if there is no absolute exemption, however, exhaustion is unnecessary here because the state remedy is inadequate and pursuit thereof would be futile.

It is well-accepted that exhaustion is not required where the administrative remedy is inadequate or futile. The claimants herein have challenged the validity of the Indiana regulation and practice on constitutional and statutory grounds. Although Indiana State Board of Public Welfare Regulation 2-113, Burns Indiana Admin. Rules & Regs. (52-1211)-1 (1970), provides that an appeal may be taken "if an applicant or recipient believes his civil or constitutional rights have been violated," paragraph (f) of the Regulation also requires that "appeal decisions * * * be based on the law, rules and regulations of the state department of public welfare, and officially adopted policies * * *." Claimants contend that this requirement permits no attack on the validity of other regulations or policies, and defendants have not suggested that it has any different meaning. Furthermore, it is unrealistic to presume that a department hearing officer, or the department itself, will declare a regulation invalid. The forum is not, and cannot be, a neutral and disinterested one. Defendants' witness McGruder testified that he did not remember reading any appeal decisions "where any quotes have been made * * * relative to the constitution." (App. 62) In response to questions concerning appeals pertaining to the issues involved herein, the defendant Stanton answered that "to the best of my knowledge, the Marion County Department of Public Welfare has been sustained in all of its decisions in this area." (App. 22) The defendant Sterrett answered that, of the four appeals filed in 1970 by persons denied relief under the six-month rule, two were heard and assistance was denied in each. (App. 27)

In these circumstances, any administrative appeal would be futile.

There are many procedural deficiencies in the state administrative procedure which render the administrative remedy inadequate.[12] The hearings are generally informal proceedings, and those types of relief which would be appropriate for implementing an adjudication on the legality of the regulation, such as injunctions and declaratory relief, are not available from the agency. An administrative appeal cannot be maintained as a class action. The inability to maintain a class action insulates from judicial scrutiny unconstitutional requirements which affect literally thousands of welfare applicants. Welfare practice is necessarily group practice. Even with federally sponsored legal services programs, the number of attorneys willing and able to serve such clients is severely limited. The class action is essential if the rights of these economically dependent citizens are to be protected. Finally, the state administrative procedure results in no published decision, no uniform statewide recognition and no binding body of law. Any decision, even if favorable, is purely *ad hoc*. In short, state administrative hearings have serious shortcomings which substantially limit their adequacy.

In addition to the foregoing, several of the purposes underlying the exhaustion doctrine have no relevance in this case. Where a regulation is attacked as invalid on its face, there is little need to develop a factual background. There are disputed facts concerning the alleged agency practice of requiring legal actions for separation or divorce, but these are facts related to agency policy and practice, not to the status and circumstances of applicants, and are more appropriately determined by a neutral tribunal. The answer to the attack made herein neither requires the agency to exercise its discretion nor to apply its expertise. Finally, given

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[12] See Note, *Federal Judicial Review of State Welfare Practices*, 67 Colum. L. Rev. 84 (1967).

the likelihood that the pursuit of administrative remedies would be futile, any consideration of judicial economy seems immaterial.

For these reasons, claimants urge that they were not required to exhaust state administrative remedies and that the District Court erred in dismissing their complaint on this ground.

III.

THE DISTRICT COURT HAD JURISDICTION OF THIS ACTION UNDER 28 U.S.C. §1343(3) SINCE THE COMPLAINT RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS.

Claimants invoked the jurisdiction of the District Court under 28 U.S.C. § 1343(3) and (4) providing for jurisdiction without regard to the amount in controversy when the protection of constitutional rights or equal or civil rights under an Act of Congress is involved. Claimants have demonstrated above that the constitutional questions raised by their complaint are sufficiently substantial to support the jurisdiction of the District Court. In these circumstances, this Court has made it plain, assuming *arguendo* that Mr. Justice Stone's distinction in *Hague v. C.I.O.*, 307 U.S. 496, 531-532 (1939)[13] retains some validity, that welfare rights are "personal rights" and that federal jurisdiction exists under § 1343(3).

The leading case is *Rosado v. Wyman*, 397 U.S. 397 (1970), which involved a challenge, on equal protection and statutory grounds, of a section of New York's Social Services Law providing for a method of reduction of monthly AFDC grants and allowances outside New York City but not for their increase. Unlike the present case, no claim was

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[13] In Justice Stone's words, § 1343(3) supports jurisdiction "whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights * * *." (307 U.S. at 531).

made in *Rosado* that the challenged law infringed any independent, personal constitutional liberties. The constitutional claim was declared moot prior to decision by the three-judge court, and, in finding that pendent jurisdiction over the statutory claim did exist in the single judge from the outset and that he did not abuse his discretion by exercising this jurisdiction, this Court clearly held that original jurisdiction was conferred by § 1343(3) because of the constitutional allegation in the complaint. Mr. Justice Harlan, writing for the Court, stated:

> "That the three-judge court itself not only had jurisdiction but would have been obliged to adjudicate this statutory claim in preference to deciding the original constitutional claim in this case follows from *King v. Smith*, 392 U.S. 309 (1968) * * * once petitioners filed their complaint alleging the unconstitutionality of § 131-a, the District Court sitting as a one-man tribunal was properly seised of jurisdiction over the case under § § 1343(3) and (4) of Title 28 * * * *." (397 U.S. at 402-403).

In *King v. Smith*, 392 U.S. 309 (1968) the Court expressly found jurisdiction under § 1343(3) where a welfare recipient challenged the validity of Alabama's "substitute father" regulation. Without explanation, the Court stated in a footnote that: "Jurisdiction was conferred on the court by 28 U.S.C. § § 1343(3) and (4)." (392 U.S. at 312 n. 3). In *Goldberg v. Kelly*, 397 U.S. 254 (1970) the constitutional allegation pertaining to a right to a prior hearing was grounded in the due process clause, but the gist of the deprivation was the loss of welfare benefits alone. In deciding that an evidentiary hearing was required before termination, the Court, without discussion, assumed that jurisdiction existed, apparently pursuant to § 1343(3). The nature of welfare benefits, however, was discussed, and these rights were defined as being in the nature of "entitlements," analogous to the license of a doctor or lawyer or the franchise of an automobile dealer. (397 U.S. at 262) These traditional entitlements have been held to be personal rights

within § 1343(3),[14] and the clear import of *Goldberg* is that welfare rights are equally personal. In addition to the above cases, the Court has rendered several other decisions in the welfare area without discussing or mentioning the jurisdictional basis thereof. *Shapiro v. Thompson,* 394 U.S. 619 (1969); *Dandridge v. Williams,* 397 U.S. 471 (1970); *Lewis v. Martin,* 397 U.S. 552 (1970); *Wyman v. James,* 400 U.S. 309 (1971).[15]

In the foregoing cases, the Court has recognized the fundamental fact that a denial of welfare aid, "upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life," *Shapiro v. Thompson,* 394 U.S. 618, 627 (1969), creates real restraints on personal freedom and endangers the basic qualities of life without which liberty is little more than a concept. This is especially true when children are affected.[16] Thus, within the *Hague* distinction, a denial of welfare payments does take on elements of personal deprivation defying valuation as well as elements of a purely proprietary nature.

[14] *Gold v. Lomenzo,* 425 F.2d 959 (2d Cir. 1970) (deprivation of real estate broker's license); *Mansell v. Saunders,* 372 F.2d 573 (5th Cir. 1967) (deprivation of garbage collection franchise); *Hornsby v. Allen,* 326 F.2d 605 (5th Cir. 1964) (deprivation of tax license).

[15] Included among the many lower court decisions upholding or assuming federal jurisdiction over welfare claims under § 1343(3) are at least two decisions by other three-judge panels in the Seventh Circuit. *Alvarado v. Schmidt,* 317 F. Supp. 1027 (W.D. Wis. 1970); *Alexander v. Swank,* 314 F.Supp. 1078 (N.D. Ill. 1969), probable juris. noted, 401 U.S. 906 (1971).

[16] Even Judge Friendly, who would retain the *Hague* distinction, in seeking to rationalize the same with recent decisions was compelled to conclude that a denial of AFDC benefits may not only cause economic loss to children, but may also infringe their "liberty" to grow up with financial aid for their subsistence. *Eisen v. Eastman,* 421 F.2d 560, 564 (2d Cir. 1969), certiorari denied 400 U.S. 841 (1970). The Second Circuit expressly adopted the position that welfare cases involve personal rights in *Johnson v. Harder,* 438 F.2d 7 (2d Cir. 1971).

In addition, however, the claimants have alleged separate deprivations of personal liberties which, in themselves, are sufficient to support federal jurisdiction under § 1343(3). *Sweeney v. Pennsylvania Dept. of Public Assistance Board*, 33 F. Supp. 587 (M.D. Pa. 1940), affirmed, 119 F.2d 1023 (3d Cir. 1941), certiorari denied, 314 U.S. 611 (1941).

With respect to claimants' statutory claims, the District Court has pendent jurisdiction. *Rosado v. Wyman*, 397 U.S. 397 (1970); *Lewis v. Martin*, 397 U.S. 552 (1970); *King v. Smith*, 392 U.S. 309 (1968). The exercise of this jurisdiction is particularly appropriate in welfare cases based on a violation of the Social Security Act because the questions are essentially one of federal policy and law. *Rosado v. Wyman*, 397 U.S. 397, 404 (1970). Furthermore, the statutory questions herein are factually embraced within the constitutional issues. Thus, as in *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960), the assertion of non-constitutional claims in conjunction with a non-frivolous constitutional attack is sufficient to bring this case within the ambit of 28 U.S.C. § 2281, and a three-judge court can adjudicate all the claims.

IV.

EVEN IF THE COMPLAINT FAILS TO RAISE SUBSTANTIAL CONSTITUTIONAL QUESTIONS, THE DISTRICT COURT HAD JURISDICTION OF THE STATUTORY CLAIMS UNDER 28 U.S.C. §§ 1343(3) AND (4).

Even if this Court should decide that the complaint fails to raise substantial constitutional questions, claimants submit that the District Court had jurisdiction under 28 U.S.C. §§ 1343(3) and (4) of the substantial statutory issues raised therein. The extent to which federal courts may have jurisdiction over suits challenging AFDC provisions solely on the ground that they are inconsistent with the federal statute is undecided by this Court. *Rosado v. Wyman*, 397 U.S. 397, 405 n. 7 (1970); *King v. Smith*, 392 U.S. 309, 312 n. 3 (1968). (But see the discussion of these cases in

Section B, *infra*). In the District Court, defendants relied upon the case of *McCall v. Shapiro*, 416 F.2d 246 (2d Cir. 1969), for the proposition that there was no federal jurisdiction. The basis of the *McCall* decision is difficult to perceive since the court appears to have proceeded on the assumption that § 1983, rather than § 1343, is the section conferring jurisdiction and also appears to have relied heavily on the *Hague* distinction. As set forth above, jurisdiction over suits alleging a denial of welfare benefits is not precluded by this distinction. The *McCall* court dealt with the difference in language between § 1983 and § 1343(3) in one short paragraph (416 F.2d at 250) and reached its conclusion that the latter does not provide jurisdiction over all suits under the former without any discussion of the legislative history and policy considerations involved.

A. The Social Security Act Provides for Equal Rights, and, Despite the Difference in Language, Section 1343(3) Should Be Construed To Be Co-Extensive With Section 1983.

Section 1983 creates a cause of action for deprivations "of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. There can be little doubt that this language entitles a welfare claimant to bring an action to ensure that his claim for benefits is considered in a manner which conforms to all statutorily mandated criteria and safeguards. *King v. Smith*, 392 U.S. 309 (1968), recognized that once a state elects to participate in the federal AFDC program, applicants and recipients have the right to insist that the state program comply with the federal statute. The problem arises because, while § 1983 embraces all "laws" of the United States, § 1343(3) grants jurisdiction of suits to redress only deprivations of rights secured by laws "providing for equal rights." This restrictive language does not preclude jurisdiction over statutory welfare claims since the Social Security Act does provide for equal rights through its recognition "that some persons, less than all, are suffering from inability to satisfy certain 'basic' wants which

presumably are felt by all alike." Michelman, *Forward: On Protecting the Poor Through the Fourteenth Amendment,* 83 Harv. L. Rev. 7, 13 (1969). More importantly, the legislative history of these sections supports the conclusion that § 1343(3) is co-extensive with § 1983.[17]

Section 1983 originated in the Civil Rights Act of 1871. Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13. The original section was substantially in its present form except that it mentioned only rights secured by the Constitution of the United States. The district and circuit courts were given concurrent jurisdiction over actions under the section.

In 1875, a full-scale revision of the federal statutes was undertaken, and section 1 of the Civil Rights Act of 1871 became R.S. § 1979. In addition, as part of the consolidation of previous acts, § 1979 was enlarged to include deprivations of rights, privileges and immunities secured by federal laws as well as by the Constitution. The jurisdictional components of the 1871 Act were separated into R.S. § 563(12) and R.S. § 629(16). Section 563(12), providing for jurisdiction in the *district* courts, was identical to § 1979 in scope. Section 629(16), however, providing for jurisdiction in the *circuit* courts, was restricted to actions for deprivations of rights under "laws providing for equal rights." The purpose underlying the addition of this limitation is unexplained. Despite the difference in language, it nevertheless seems to have been the intent to provide a jurisdictional basis in both sections for actions under R.S. § 1977 (28 U.S.C. § 1981) and R.S. § 1979 (28 U.S.C. § 1983). Both jurisdictional statutes are cross-referenced by the Revisors to §§ 1977 and 1979. The close relationship between the jurisdictional statutes and § 1979 was also recognized by contemporary judicial opinion. In two of the Virginia coupon cases, *Carter v. Greenhow,* 114 U.S. 317

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[17]This history is fully discussed in Herzer, *Federal Jurisdiction Over Statutorily Based Welfare Claims,* 6 Harv. Civil Rights-Civil Liberties L. Rev. 1 (1970); Note, *Federal Judicial Review of State Welfare Practices,* 67 Colum. L. Rev. 84, 109-115 (1967); Note, *The Proper Scope of the Civil Rights Acts,* 66 Harv. L. Rev. 1285 (1953).

(1884), and *Pleasants v. Greenhow*, 114 U.S. 323 (1884), the construction of § 1979 and § 629(16) was at issue. While the precise question involved herein did not arise, there was a rather clear recognition of the concept that § 629(16) was merely the jurisdictional counterpart of § 1979. (114 U.S. at 320).

In the 1910 revision of the Judiciary Code, the two jurisdictional statutes were merged, original jurisdiction remaining only in the district courts. The new section retained the limitation found in § 629(16). There is no evidence, however, that Congress intended to diminish the prior jurisdiction of the district courts. To the contrary, the sparse legislative history suggests that the jurisdiction of the district court was to be equal in scope to that of the former to statutes. As stated in S. Rep. No. 388, 61st Cong., 2d Sess., pt. 1, at 15 (1910):

> "This paragraph merges the jurisdiction now vested in the district courts by paragraph 12 of section 563, and in the circuit courts by paragraph 16 of section 629, and vests it in the district courts."

This indicates that there was never any Congressional intent to restrict the scope of § 1983 by restricting federal jurisdiction under § 1343(3). Although the question was not discussed, this may have been the basis of Judge Hand's decision in *Bomar v. Keyes*, 162 F.2d 136 (2d Cir. 1947), certiorari denied 332 U.S. 825 (1947).

The relevant policy considerations fully support the nonrestrictive reading of § 1343(3). If the purpose of § 1983 is to provide a federal remedy that is truly "supplementary" to any state remedy, *Monroe v. Pape*, 365 U.S. 167, 183 (1961), then a narrow construction of the jurisdictional statute would defeat that Congressional purpose. In addition, those same factors which have led to the no-exhaustion rule under § 1983 dictate that a federal forum be available for statutory welfare cases. State administrative agencies are particularly inadequate to decide claims based upon a conflict between state and federal provisions. Actions involving

important interpretations of federal rights and expenditures of federal funds should, therefore, be adjudicated in the federal courts under § 1343(3).[18]

B. Jurisdiction Over Statutory Welfare Claims Exists Under Section 1343(4).

Section 1343(4) grants jurisdiction over actions "to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."[19] The decisions of this Court indicate that this language confers jurisdiction over statutory welfare claims. In *Rosado v. Wyman*, 397 U.S. 397 (1970), for example, the New York Social Services Law was attacked on constitutional and statutory grounds. The constitutional claim was declared moot, and the question on appeal was the power of the district court to adjudicate the pendent claim. In discussing the basis of that court's jurisdiction, it was stated that "once petitioners filed their complaint alleging the unconstitutionality of § 131-a, the District Court sitting as a one-man tribunal, was properly seised of jurisdiction over the case under §§ 1343(3) and (4) of Title 28 * * *." (397 U.S. at 403) Similarly, in *King v. Smith*, 392 U.S. 309, 312 n. 3 (1968), it was declared that "jurisdiction was conferred on the court by 28 U.S.C. §§ 1343(3) and (4)." Since § 1343(4) plainly does not cover deprivations of rights secured by the Constitution,

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[18]The fear of the Second Circuit that the assumption of such jurisdiction "would be to accept a federal court review over almost every ruling of the [state] Commissioner in the day-to-day operation of state welfare laws, regardless of the amount involved," *McCall v. Shapiro*, 416 F.2d 246, 250 (2d Cir. 1969), seems grossly over-stated. Under § 1983, federal jurisdiction can be invoked only when conflicts between state and federal laws exist. Violations solely of state welfare laws are excluded from § 1343 jurisdiction.

[19]The *Hague* distinction appears to have no validity under § 1343(4) since it provides jurisdiction for actions under 42 U.S.C. § 1982. *Jones v. Mayer Co.*, 392 U.S. 409 (1968).

jurisdiction under that section could have existed in the above cases only if statutory welfare claims are embraced within its language. This result can be reached either on the ground that the Social Security Act of 1935 is a law protecting civil rights or that § 1983 itself is such a law.

The former rationale is supported by the undisputed fact that welfare rights involve the "very means to subsist," *Shapiro v. Thompson*, 394 U.S. 618, 627 (1969), and by the increasing recognition that society has an obligation to provide support to individuals without sufficient resources to live under conditions of health and decency. *Cf.* Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 Yale L.J. 1245, 1255-56 (1965). The latter position was adopted in *Gomez v. Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969), in which a group of migratory farm workers sought enforcement of the minimum wage and adequate housing provisions of the Wagner-Peyser Act of 1923. The Fifth Circuit found that the plaintiffs had stated a cause of action under § 1983 over which the federal courts had jurisdiction, saying:

> "* * * § 1343(4) does provide jurisdiction for all claims stated under § 1983 * * * [A]lthough operating as a conduit through which other statutory rights are protected, [§ 1983] is itself an 'Act of Congress providing for the protection of civil rights.'" (417 F.2d at 580 n. 39).

A similar result was reached in *Worrell v. Sterrett*, 2 Pov. L. Rep. ¶ 10,575 (N.D. Ind. 1969), which upheld § 1343(4) jurisdiction over a welfare claim requiring a county welfare department to rule upon AFDC applications within the thirty-day limit prescribed by the Social Security Act and the HEW regulations.

On the basis of the foregoing, therefore, claimants assert that the District Court had jurisdiction over their substantial statutory claims, regardless of the substantiality of the constitutional issues involved herein, under both sections 1343(3) and 1343(4).

CONCLUSION

The rights of the poor have frequently been before the courts in recent years. With respect to welfare claims, the federal courts have been predominant in protecting the rights asserted. This is both proper and natural since the welfare system is essentially federal in nature and since the claims advanced have been grounded upon either federal constitutional or statutory provisions. Indeed, for the welfare applicant or recipient a federal forum for obtaining relief from illegal state welfare practices is vital.

The complaint involved herein presents substantial constitutional and statutory questions which support federal jurisdiction under 28 U.S.C. § 1343 and render unnecessary any exhaustion of state administrative remedies. In failing so to recognize, the judgment of the District Court is contrary to the governing decisions of this Court and to a number of policies of federal importance. For these reasons, claimants pray that the judgment of the District Court dismissing their complaint be reversed and that the case be remanded for further proceedings.

Respectfully submitted,

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July 1971

APPENDIX A

STATUTORY AND REGULATORY PROVISIONS INVOLVED

I

The action dismissed below challenged the combined effect of Indiana State Board of Public Welfare Regulations 2-400 and 2-402, Burns Ind. Admin. Rules & Regs. (52-1001)-1 and (52-1001)-2 (1967), which read as follows:

Reg. 2-400. *Definition-Dependent Child.*

(a) For the purpose of administration of assistance to dependent children, a dependent child means a needy child under the age of sixteen [16] years, or under the age of eighteen [18] years if found by the county department having jurisdiction of such child under the provisions of the Welfare Act of 1936, as amended, to be regularly attending school, who has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent, and whose relatives liable under the law for his support are not able to provide adequate care or support for such child without public assistance, and who is living with an eligible relative as listed in section 1(1), Part I of the Welfare Act of 1936, as amended, or regulation 2-401.

(b) Provided that a needy child who meets the provisions of subsection (a) above shall be considered eligible to receive assistance if such child is over the age of sixteen [16] years and under the age of eighteen [18] years, and, according to medical evidence, is physically or mentally unable to attend school.

(c) Provided further a needy child who meets the provisions of subsection (a) above shall be considered eligible to receive assistance if such child is over the age of eighteen [18] years and under twenty-one [21] years and is, according to school authorities regularly attending school for the purpose of completing his

high school education or regularly enrolled in an approved vocational or technical training program designed to fit him for gainful employment.

Reg. 2-402. *Continued absence from the home–Assistance to dependent children.*

(a) For the purposes of administration of assistance to dependent children, continued absence from the home shall mean that the child has been deprived of the support or care of either parent by reason of the desertion of a parent, separation of the parents, incarceration of a parent in a penal or correctional institution, or service of a parent in the armed forces of the United States.

(b) When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six [6] months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and reasons for such action.

(c) When the continued absence is due to incarceration in a penal or correctional institution, such absence shall have been continuous for a period of three [3] months prior to the date of application for assistance for the dependent child, except that a child becomes immediately eligible when the sentence of a parent plus the number of days required to serve out the fine and costs at $5.00 a day, equals ninety [90] days or more. When the parent is incarcerated, an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and the reason for such action.

(d) When the continued absence is due to service of a parent in the armed forces of the United States, the child of such parent becomes immediately eligible

for assistance to dependent children if otherwise eligible.

II

State administrative appeals are governed by the provisions of Acts 1936 (Spec. Sess.), ch. 3, § 77, p. 12, Burns Ind. Stat. Ann. § 52-1246 (1964), and Indiana State Board of Public Welfare Regulation 2-113, Burns Ind. Admin. Rules & Regs. (52-1211)-1 (1970), which provide:

> § 52-1246.
>
> The county department shall at once report to the state department its decision upon each such application for assistance to a dependent child. If any such application is not acted upon by the county department within a reasonable time after the filing of the application, or if such application is denied, of if assistance previously granted is modified or revoked, the applicant may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such an appeal, give the applicant an opportunity for a fair hearing thereon. The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigations as it may deem necessary, and shall make such decision relative to the granting of assistance and the amount of the assistance to be granted as, in its opinion, is justified and in conformity with the provisions of this act [chs. 10-14 of this title]. All decisions of the state department made in conformity with the terms of this act shall be binding upon the county department involved and shall be complied with by such county department and shall have the same force and effect as decisions of the county department from which appeals are taken.

Reg. 2-113. *Appeals.*

(a) If the county department of public welfare refuses to accept an application for any type of public assistance as provided for in the Welfare Act of 1936 [Burns' Stat., § § 52-1001–52-1417], as amended; or any other law pertaining to public assistance; or if an application is not acted upon within the time limit established by the state department of public welfare and approved by the department of health, education, and welfare; or if an applicant or recipient is dissatisfied with the amount of the award; or if an application is denied; or if an applicant or recipient believes his civil or constitutional rights have been violated; or if an applicant or recipient believes that the state or county department's policies, including work requirements, are not reasonable or equitable and that these affect him adversely; or if the applicant or recipient believes that restrictions have been placed on his assistance payment that violate his right to an unrestricted money payment, the applicant or recipient may appeal to the state department of public welfare.

Such appeal shall be in writing over the signature of the applicant or recipient or person who is entitled to or who has been designated to act in his behalf and shall be filed with the county or state department of public welfare within 30 days following either the action or issue being appealed. Every applicant or recipient shall be notified of his right to appeal to the state department of public welfare at the time of his application, and concurrently with each grant, denial or modification of award.

(b) Upon the receipt of an appeal, the state department immediately will write the appellant, with a copy to the county department, acknowledging the request for an appeal and setting a date and place for such appeal hearing within three [3] weeks from the date of receipt of the request for an appeal. The county department will review the appellant's situation immediately and if an adjustment of the appealed

action is indicated will advise the appellant and the state department accordingly within two [2] weeks after the receipt of the notice of an appeal.

If the appeal is based on a denial of assistance because of a state department decision regarding permanent and total disability or blindness, the appropriate staff member of the state department will review the evidence on which the original decision was based. Additional medical and/or social information may be requested for use in reviewing the original decision.

The appellant may, if he desires to do so, withdraw his request for a hearing or postpone the hearing pending any adjusting action. If not, the hearing will proceed as scheduled.

(c) If the action taken by the county department, either prior to the hearing or as a result of the decision on a fair hearing corrects a previous agency action, the effective date of the correcting action shall be retroactive to the date the original incorrect action was effective. If a delay in action on an application is being corrected, the effective date of the correcting action shall be the first of the month following the month in which action should have been taken. If action is being taken to change an award because of a reported change in circumstances, the correcting action shall be retroactive to the first of the month following the month in which the action should have been taken.

If the state department reverses its decision regarding permanent and total disability or blindness either prior to the hearing or as a result of the additional medical evidence obtained in the hearing process, the county department, or in a blind assistance case the state department, will rescind the action taken on the application and promptly approve assistance retroactively to the first of the month following the month in which the original action was taken, if the appellant was otherwise eligible.

(d) Any fair hearing shall be held at a place convenient to the appellant in the county in which he resides and shall be conducted by an official or employee of the state department of public welfare duly designated to hold such hearings. The hearing shall be informal and shall provide an opportunity for all persons who have pertinent information to be heard promptly. The appellant may be represented by any person of his own choice, including legal counsel if he so desires. The appellant or his representative shall have full opportunity to question or refute any evidence presented by the state or county department and to examine all documents and records used at such hearing, and said departments shall have the same opportunity as the appellant.

The hearing officer, with the consent of the appellant or his representative, may continue the hearing in order to secure additional information pertinent to the case, or the appellant or his representative may request a continuance in order to obtain such information.

(e) When the issue of the appeal involves a medical determination regarding disability, incapacity of a parent, or the ability of an assistance to dependent children family member to take employment, the appellant shall be given an opportunity to obtain a new medical evaluation from a medical source satisfactory to him and to the state and county department of public welfare. Such medical evaluation shall be secured in accordance with the provisions of the county medical plan. The hearing officer will consider the medical evidence in the record presented at the hearing and may request additional medical evidence. The assessment of such medical authorities will be reported in writing or by personal testimony as an expert witness for the hearing record. The medical assessment must be from a person or persons other than those involved in the original decision.

When the appeal is based on blindness or degree of vision, the supervising opthalmologist shall

designate an appeal examiner and the consultant for blind assistance and eye treatment will arrange for the eye examination and report.

The results of the examination shall be provided the hearing officer and the hearing continued with the appellant being notified of such decision and his right to a further review by the state board of public welfare.

(f) Within three [3] weeks after the conclusion of a fair hearing, the person who conducted the hearing shall report his findings of fact and decision upon the hearing. Such appeal decisions will be based on the law, rules and regulations of the state department of public welfare, and officially adopted policies and shall be signed by the administrator or a designee of the administrator and/or the director of the division of public assistance. A copy of the decision shall be sent to the appellant and to the county department of public welfare within two [2] weeks of the date of receiving the report of the hearing officer. The appellant shall also be notified that the state board of public welfare will review his case personally if a specific request is received by the state department from either the appellant or the county department of public welfare within 10 days following the receipt of the appeal decision.

(g) The decision of the state department of public welfare shall be binding upon the county department of public welfare and shall be acted upon immediately by the county director or the county board following the receipt of the decision. The effective date of the action shall be set forth in the decision.

The county department shall notify the state department within 48 hours of the action taken. Such decision of the state department does not preclude the county department of public welfare from modifying the award thereafter, under the provisions of the Welfare Act of 1936, as amended, to meet changed conditions.

(h) The appellant may withdraw his appeal at any point in the procedure by submitting a signed request to the state department of public welfare.

III

The provisions of the Social Security Act of 1935 which are particularly relevant to this appeal are § 402(a)(10), 49 Stat. 627, 42 U.S.C. § 602(a)(10), and § 406(a), 49 Stat. 629, 42 U.S.C. § 606(a), which provide:

§ 402(a)(10).

(a) A State plan for aid and services to needy families with children must * * * (10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals * * *.

§ 406(a). When used in this part–

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment * * *.

IV

The action was brought pursuant to the provisions of 42 U.S.C. § 1983, and the jurisdiction of the District Court was invoked under 28 U.S.C. § 1343(3) and (4), which statutes provide:

> § 1983.
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
>
> § 1343
>
> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> * * * * *
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

V

Appellants contended below that the Indiana regulations and practices conflict with the First, Fourth and Fourteenth Amendments of the Constitution of the United States, which provide:

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

The 1971 Indiana General Assembly completely recodified the laws of the State of Indiana in adopting the Indiana Code of 1971. This Code is presently effective, but has not yet been published. The following table cross-references the sections of Burns Indiana Statutes Annotated cited herein to the corresponding provisions of the Code.

Burns Sections	*Code*
3-1203	Title 31, Art. 1, Ch. 12, Sec. 2
3-1231	Title 31, Art. 1, Ch. 22, Sec. 4
52-144	Title 12, Art. 2, Ch. 1, Sec. 1
52-148	Title 12, Art. 2, Ch. 1, Sec. 6
52-150	Title 12, Art. 2, Ch. 1, Sec. 8
52-1113	Title 12, Art. 1, Ch. 2, Sec. 12
52-1240	Title 12, Art. 1, Ch. 7, Sec. 1
52-1241	Title 12, Art. 1, Ch. 7, Sec. 3
52-1242	Title 12, Art. 1, Ch. 7, Sec. 5
52-1243	Title 12, Art. 1, Ch. 7, Sec. 6
52-1246	Title 12, Art. 1, Ch. 7, Sec. 9
52-1247	Title 12, Art. 1, Ch. 7, Sec. 10

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1970

No. 70-5082

LAVERNE CARTER, et al.,
Appellants,

v.

WAYNE STANTON, et al.,
Appellees.

Appeal From The United States District Court For The Southern District of Indiana

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BRIEF FOR APPELLEE WILLIAM STERRETT

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court has jurisdiction of an appeal from a three judge panel which has dissolved itself as improperly convened for want of a substantial federal question, even if, in fact, a substantial federal question was presented.

2. In the alternative, whether a substantial federal question was presented.

3. In the alternative, whether the lower court properly ordered the cause dismissed for a failure of the Applicants to exhaust their state administrative remedies.

STATEMENT OF THE CASE

Appellants, hereafter referred to as Applicants, initiated an action challenging the Indiana continued absence Regulation as inconsistent with the Social Security Act and as violative of the Fourth and Fourteenth Amendments to the Constitution of the United States. Applicants claimed that the Indiana "continued absence" Regulation, hereafter referred to as the Regulation, Reg. 2-402(b), Burns Rules and Regulations (52-1001)-2, violated the Constitution on its face and as administered by the Indiana Welfare Department.

Applicants alleged that the welfare department administered the Regulation by categorically denying assistance to all who had been separated from their spouses for less than six months unless they filed for divorce or legal separation.

A three judge panel was convened. The appellee in whose behalf this brief is presented, the Indiana State Department of Public Welfare, hereafter referred to as the SDPW, moved to dismiss for a want of jurisdiction. (A. 19). In order to resolve the matter, the lower court conducted a preliminary hearing in which it received evidence. (A. 211).

Evidence adduced at the evidentiary hearing disclosed that the Regulation is a guideline to assist in administratively determining whether the absence of a parent is

actual and bona fide. Applications for assistance are received from everyone presenting themselves at the County Department. (A. 50, 64, 176, 189, 191). There is a statewide policy of monetary need applied to everyone who applies. (A. 49, 58-59, 175). The standard of need applied to an applicant is the same whether the applicant has been separated from her husband for less than six months or for more than six months. (A. 51, 192, 195). The six month period designated by the Regulation is a guideline only. The six month requirement is regularly waived. (A. 51-53, 55, 176, 187, 192). For instance, Ernest McGruder, a supervisor for the Marion County Welfare Department (A. 47) testified that he had never refused AFDC assistance solely because the parents had been separated for less than six months, if the separation was actual and bona fide. (A. 65). A separation was actual and bona fide if it appeared that the parents would not be reconciled in the near future. (A. 66).

Filing for divorce or a legal separation is not a condition precedent to applying for, or actually receiving, welfare assistance, even though the applicant has been separated for less than six months from her husband. (A. 50, 177, 187, 192). The question in these cases is always one of financial need. (A. 64, 198). Welfare assistance is regularly obtained even though the recipient has filed for no divorce, no separation and has been separated from her husband for less than six months. Whether an applicant has filed for a divorce or a legal separation is only one of many factors bearing on the issue of whether the absence of the departed parent is actual and bona fide. (A. 176-177, 180-182).

Denying the right to make an application, denial of an application and the amount of assistance actually granted

are all appealable decisions in the Indiana statutory scheme. Decisions of the County Department of Public Welfare are appealable to the SDPW and decisions of the SDPW are appealable to the State Board of Public Welfare. In all instances, whatever the decision of the County Department of Public Welfare, the applicant is notified verbally and in writing of her right to appeal the county decision. (A. 193). An appeal may be readily obtained by no more than a telephone call. (A. 52).

In light of the evidence received at the evidentiary hearing conducted by the district court on November 24, 1970, it found that:

> "Under Indiana Law each claimant is provided with a right to appeal any decision made by the case workers or supervisors at the county level, whether it be a denial of the right to file an application, or dissatifaction with the amount of the grant. The appeal procedures provide a right to have the decision reviewed by the State Department of Public Welfare and if still dissatisfied with the decision, a second appeal may be had to the State Board of Public Welfare. None of the plaintiffs testified that they appealed the county decision. Only one of the witnesses, Toni Davis, testified that she appealed to the State Department of Public Welfare, but not to the State Board of Public Welfare. Defendant Stanton, Director of the County Department of Public Welfare, testified the file does not record any appeal taken by any of the plaintiffs." (A. 211-212).

Consequently, the district court concluded that the Applicants had wholly failed to exhaust the state administrative remedies available to them. (A. 212). Furthermore, in light of the pleadings and the evidence received, the district court concluded that the Applicants had not presented a substantial federal question and effectively dissolved itself

for want of federal jurisdiction, when it ordered the case dismissed. (A. 212).

SUMMARY OF ARGUMENT

To date, the participants in this appeal have ignored the significance of the three judge district court's dismissal for want of federal jurisdiction. When the three judge panel found that the constitutional questions raised by the Applicants were insubstantial and dismissed for want of jurisdiction, the three judge panel effectively dissolved itself as improperly convened. The dissolution of a three judge panel is effectively the same as a single district judge's denial of a motion to convene a three judge panel and an appeal should be taken to the United States Court of Appeals for the Seventh Circuit.

In the alternative, even if this appeal is properly before this Court, the constitutional questions presented by the Applicants are not substantial. The "continued absence" Regulation at the issue in this case is not unconstitutional on its face. It does not classify welfare claimants into two groups, those who have been separated from their husbands for less than six months and those who have been separated from their husbands for more than six months. The six month period of the Regulation is a guideline only. Effectively, the Regulation classifies welfare claimants into two groups, those whose separation from their spouses is actual and bona fide and those whose separation is not, clearly a constitutional classification. Furthermore, the Regulation is not unconstitutionally administered. Applicants' claim that the Indiana Welfare Department will not waive the six month period of the Regulation unless the welfare applicant applies for a

divorce or legal separation. The court below conducted an evidentiary hearing on just that issue. The burden was on the Applicants to prove that the alleged practice existed. They failed to sustain this burden in the district court. In this Court, the burden is on the Applicants to show that the district court erred in this regard. This the Applicants have failed to do. Hence, the decision of the district court should be affirmed.

In the alternative, the court below properly dismissed for the Applicants' failure to exhaust administrative remedies, even if a substantial federal question might have been presented. This Court's decision in *Damico v. California,* 389 U.S. 416 (1967), should be reconsidered in light of the Indiana administrative scheme for reviewing welfare claims and in view of this Court's decision in *Goldberg v. Kelly,* 397 U.S. 254 (1970). First, the State administrative remedies are neither inadequate nor their pursuit futile. The law in Indiana provides an AFDC applicant, pursuing an administrative appeal, with the full discovery rights of a civil litigant, discovery rights which are more extensive than those provided a civil litigant in the federal courts. The fact finding forum which the Applicants sought in the federal court was already available to them before the welfare department. Secondly, having decided that constitutional procedural due process rights attach to administrative hearings before the welfare department in *Goldberg v. Kelly, supra,* the Applicants in this case should be required to pursue their remedies before the welfare department. Therefore, this Court should affirm the judgment of the district court dismissing this action for the Applicants' failure to exhaust their administrative remedies.

ARGUMENT

I

EVEN IF APPLICANTS PRESENTED A SUBSTANTIAL FEDERAL QUESTION BELOW, THIS COURT DOES NOT HAVE JURISDICTION OF THIS APPEAL BECAUSE WHEN THE THREE JUDGE PANEL BELOW DISMISSED THIS CAUSE FOR WANT OF FEDERAL JURISDICTION, IT EFFECTIVELY DISSOLVED ITSELF AS IMPROPERLY CONVENED AND APPEAL LIES ONLY TO THE COURT OF APPEALS.

To date, the participants in this appeal have ignored the significance of the three judge district court's dismissal for want of federal jurisdiction. What is raised is a question of this Court's jurisdiction to hear this appeal.

This Court's jurisdiction to hear this appeal may be challenged at any time, either at the suggestion of the appellee, *Flast v. Cohen*, 392 U.S. 83, 88, n.2 (1968), *United States v. Griffin*, 303 U.S. 226, 228, 229 (1938), or by this Court on its own motion, *Stratton v. St. Louis*, 282 U.S. 10 (1930). Turning to the procedure adopted by the court below, rather than conduct a hearing on the substantiality of the federal claims presented by Applicants, the single district judge before whom the motion to convene a three judge panel was pending granted the motion and a three judge panel was in fact convened. After convening, the three judge panel conducted a hearing for the purpose of determining whether the Applicants presented a substantial federal claim. After receiving all the evidence,

the three judge panel concluded that the Applicants had not presented a substantial federal question and that it was without jurisdiction. (A. 212). *See E.g., McNutt v. General Motors Acceptance Corp.,* 298 U.S. 178 (1936). Rather than dissolving itself and remanding the case to the single district court judge, before whom the claim was pending, for disposition, the three judge panel in fact ordered the cause dismissed.

The only proper measure to take when it concluded that no substantial federal question was presented was for the three judge panel to dissolve itself, leaving the cause to be disposed of by the single judge before whom the cause was initially pending, See, *E.g. Mengelkoch v. Industrial Welfare Commission,* 284 F. Supp. 950 (dissolving three judge panel), 284 F. Supp. 956 (abstaining) (C.D. Calif. 1968); *Marcello v. Kennedy,* 194 F. Supp. 748 (dissolving three judge panel), 194 F. Supp. 750 (single judge granting Motion for Summary Judgment) (D.C. D.C. 1961); *But see, California Water Co. v. Redding,* 304 U.S. 252 (1938). Clearly, the effect of dismissing this cause for want of federal jurisdiction was to dissolve the three judge panel. Even though the three judge panel dismissed the cause, on appeal, the cause should stand as if dismissed by a single district judge. The participation of the circuit judge and the additional district judge in the motion to dismiss is superflous. *Perez v. Ledesma,* U.S., 91 S.Ct. 674, 677-678 (1971); *Wilson v. Port Lavaca,* 391, U.S. 352 (1968). An appeal from the decision of a single district judge denying a motion to convene a three judge panel for want of a substantial federal question is to the Court of Appeals, in this case, the United States Court of Appeals for the Seventh Circuit. *German v. South Carolina State Ports Authority,* 295 F.2d 491, 493-494 (4th

Cir. 1961) (authorities cited). Since the decision of the three judge panel was that it was without jurisdiction under 28 U.S.C. §2281, this Court is without jurisdiction under 28 U.S.C. §1253 and the appeal should have been to the United States Court of Appeals for the Seventh Circuit. *Perez v. Ledesma, supra; Mengelkoch v. Industrial Welfare Commission,* 393 U.S. 83 (1968); *Wilson v. Port Lavaca, supra.*

That this Court is without jurisdiction of this appeal is further borne out by an analysis of 28 U.S.C. §1253 itself. Under §1253, an appeal to this Corut is from an ". . . *order* granting or denying . . . an interlocutory or permanent injunction . . ." An inspection of the lower court's judgment in this case discloses that no such order was entered. (A. 211-212). Hence Applicants may not avail themselves of the benefits of §1253.

Therefore, this appeal should be dismissed at the suggestion of the SDPW or this Court's own motion.

II

IN THE ALTERNATIVE, APPLICANTS HAVE NOT PRESENTED A SUBSTANTIAL FEDERAL QUESTION.

The Applicants claim that the Regulation conflicts with the Social Security Act and with the Constitution. Assuming *arguendo,* that this Court has jurisdiction of this appeal, only the alleged constitutional violations are before it. If a substantial federal question was not presented to the three judge panel below, then it properly dismissed (or dissolved) for want of jurisdiction. An alleged constitutional violation is a substantial federal

question which requires that a three judge panel be convened, but a conflict with the Social Security Act is not. *Swift & Co. v. Wickam,* 382 U.S. 111 (1965); *Case v. Bowles,* 327 U.S. 92, 97 (1946); *Ex parte Buder,* 271 U.S. 461 (1926); Cf. *Florida Lime Growers Association v. Jacobsen,* 362 U.S. 73, 82 (1960).

The question posed by the Applicants is whether the three judge panel had jurisdiction to hear the Applicants' claims. The alleged statutory conflict is reached only if the constitutional question is substantial. *Swift & Co. v. Wickam, supra.* Hence, this Court need only concern itself with whether the Applicants' constitutional claims present a substantial federal question.

A three judge panel is properly convened only if the constitutional question raised is substantial. *Flast v. Cohen,* 392 U.S. 83, 91, n. 4 (1968). *Ex Parte Poresky,* 290 U.S. 30 (1933). That a federal question is insubstantial may appear on its face from an examination of the Applicants' claims. *Swift & Co., v. Wickam, supra; Zemel v. Rusk,* 381 U.S. 1, 6 (1965); *California Water Service Co. v. City of Redding,* 304 U.S. 252, 255 (1938).

In their complaint, Applicants alleged that the Regulation violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States because it invidiously and irrationally classifies the children's parents into two groups, one being parents of children who have been separated for less than six months and the other being parents of children who have been separated for more than six months. Morever, Applicants claim, the classification is arbitrary and without a rational relationship to the needs of the parents and their children. Furthermore, Applicants claim that the Regulation as administered by the welfare department violates the Due

Process and Equal Protection Clauses of the Fourteenth Amendment and the right of privacy as guaranteed by the Fourth Amendment because the welfare department allegedly demands that an applicant for assistance obtain a divorce or legal separation as a condition precedent to obtaining welfare assistance in less than the first six months after they have separated from their husbands.

The Applicants' arguments are based on a misconstruction of the Regulation. When the Regulation is scrutnized, the Applicants' claims evaporate. The Regulation on its face designates the six month period as a guideline only. In making their argument, the Applicants ignore the exception to the six month rule. The Regulation effectively provides, on its face, that the six month rule does not apply when it is determined that the need for assistance exists and that the parent's absence is actual and bona fide. The authorities upon which the Applicants rely to support their claim of substantiality on this point all involve statutes or regulations creating non-rebuttable presumptions. *See, Shapiro v. Thompson,* 394 U.S. 618 (1969); *see also, Doe v. Hursh,* 2 Pov. L. Rep. ¶11, 753 (D. Minn. 1970); *Damico v. California,* 2 Pov. L. Rep. ¶10, 478 (N.D. Calif. 1969). On its face, the six month period of the Regulation is a guideline only. At worst, it provides for a rebuttable presumption as to what constitutes a continued absence. It cannot be said that the Regulation on its face precludes AFDC assistance in all instances where the parents have been separated for less than six months. Clearly, an undetermined number of applicants may obtain assistance even if separated less than six months upon a showing of exceptional circumstances and of an actual and bona fide separation. Moreover, it cannot be said that the Regulation on its face creates two groups of needy children,

those whose parents have been separated for less than six months and those whose parents have been separated for more than six months. The two classes created by the statute are those whose parents have actually separated and those who have not. Thus, this claim of the Applicants does not present a substantial federal question.

The next branch of the Applicants' argument is based on the way on which they claim the Regulation is administered. Applicants claim that the welfare department administers the Regulation by requiring applicants who have been separated from their spouses for less than six months to file for a divorce or legal separation as a condition precedent to obtaining a waiver of the six months rule and that assistance can never be obtained in less than six months by an applicant who has not filed for a divorce or legal separation. Applicants argue that this alleged practice of the welfare department violates the Applicants' rights guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment and the right of privacy guaranteed by the Fourth Amendment. This claim of the Applicants must be considered in light of the proceedings and disposition below.

The lower court conducted an evidentiary hearing on the Applicants' claims. The evidence regarding the alleged practice of the welfare department requiring an applicant to file for a divorce or legal separation was in conflict. The testimony of the Applicants themselves conflicted as did the testimony of some of the Applicants with the testimony adduced by the welfare department. For instance, of witnesses for the Applicants, Tanner began receiving AFDC within a month of her application for assistance (she had filed for divorce before she ever applied for

AFDC) (A. 73, 75); and Watkins, received her first AFDC check within a month of her application. (A. 82, 84), even though she never filed for a divorce or separation. Of the Applicants themselves, Enoch began receiving AFDC assistance within two months of her application (A. 150-155), although she had never obtained a divorce or separation (A. 144); and Hall began receiving AFDC assistance within three months of her application (A. 163), without filing for a divorce or separation. (A. 160, 163). Shortly after Applicants Laverne Carter and Steele separated from their husbands, they reunited and were living together on the day of the evidentiary hearing. (A., Carter, 134; Steele, 135). Applicants, Bowman, Enoch and Hall and witnesses for the Applicants, Tanner, Watkins and Luke were receiving AFDC at the time of the hearing below. And finally, Davis, a witness for the Applicants was employed at a local hospital at a bi-weekly income of $135.00 to $160.00, at the time of the hearing below. (A. 96). Testimony for the welfare department showed that filing for or obtaining divorces and separations are not required as a condition precedent to obtaining a waiver of the continued absence Regulation. Both Blankenbackler (A. 168-170) and Smith (A. 170-174) began receiving AFDC assistance within a month after they applied, without that first mention of filing for a divorce or separation. The director and personnel of the Marion County Department of Public Welfare also testified that filing for or obtaining a divorce or separation is not a condition precedent to obtaining a waiver of the Regulation (A. McGruder, 50, 54; Carver, 176-177; Hartzlar, 187; Stanton, 191), and that the six month period of the Regulation is regularly waived. (A. 52-55, 58, 176, 187, 192).

The Applicants, at p. 18 of their brief, say that:

> ". . . Claimants submit that a full trial of this case is required to determine this factual issue [the welfare department's practices under the Regulation], but that, for the purpose of determining if substantial legal questions are presented by claimant's allegation, such policy and practice must be deemed to exist."

This is a clear mis-statement of the law and well illustrates the unsoundness of the position the Applicants have taken in this Court on appeal. The Applicants claim that the alleged practices of the welfare department must be deemed to exist for the purposes of this appeal. The alleged practices of the welfare department go to the jurisdiction of the three judge panel to hear this case, that is to say, whether Applicants have presented a substantial federal question. Jurisdiction is never deemed to exist. The burden of proving jurisdiction in the district court lay with the Applicants. The burden of showing this Court that the three judge panel had jurisdiction to consider the Applicants' claims is with the Applicants. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936). The Applicants have wholly failed to sustain that burden in either court. The three judge panel below conducted an evidentiary hearing for the purpose of determining whether the facts supported the Applicants' allegations and found that they did not. *See E.g., McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). Since it was the function of the district court to resolve conflicts in the testimony and since the district court concluded that the Applicants had not presented a substantial federal question (A. 212), it must be inferred that the lower court resolved all conflicts in the evidence in favor of the welfare department. The testimony of the welfare department

clearly showed that filing for a divorce or legal separation was not a condition precedent to filing an application for assistance or obtaining assistance in less than the six months prescribed by the rule. Having failed to convince the lower court of their claims, the Applicants cannot be heard now to request this Court to resolve the conflicts in the evidence or to request this Court to remand the case to the district court to re-hear the evidence already heard. Having failed to carry the day in the district court, the Applicants can hardly be heard again on their claim that the Indiana Welfare Department requires an applicant to file for a divorce or legal separation under the Regulation. Absent this factual basis, the Applicants' Fourth and Fourteenth Amendment arguments must fall. Absent a factual basis for their claim, applicants have presented neither the district court nor this Court with a substantial federal question regarding the welfare department's practices under the Regulation.

Although the merits of the Applicants' claims regarding the validity of the Regulation are not before the court in this appeal, it is only fitting that this case be considered in light of this Court's decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970). The impact of *Goldberg* cannot be ignored in resolving the issues before this Court in this appeal. In *Goldberg*, this Court decided that the full panoply of constitutional procedural due process applied to a state welfare department's decision to terminate welfare benefits. The *Goldberg* decision places a heavy burden on the administration of AFDC assistance. The ramifications of *Goldberg* are awesome. See the dissents of Chief Justice Burger, at p. 280, Justice Black, at p. 271, and Justice Stewart, at p. 385 of *Goldberg*. In view of the costly and time consuming procedures this Court has required

of the States in order to terminate benefits, it is only reasonable that the dispensers of AFDC assistance must ensure eligibility before granting AFDC assistance in the first instance. The Indiana Regulation at issue here is intended to be one of those assurances. It is not an unreasonable method of ensuring an applicant's eligibility. In considering the Regulation involved in this case it would be well for this Court to regard it in light of its decision in *Goldberg*.

In conclusion, the SDPW submits that the district court properly dismissed on the Applicants' failure to present a substantial federal question.

III

IN THE ALTERNATIVE, THE LOWER COURT PROPERLY ORDERED APPLICANTS' CAUSE DISMISSED FOR A FAILURE OF THE APPLICANTS TO EXHAUST THEIR STATE ADMINISTRATIVE REMEDIES.

The Indiana statutory and regulatory scheme provides every claimant with a right to appeal any decision of the County Welfare Department denying an application for assistance or modifying or revoking the amount of assistance previously granted, to the State Department of Public Welfare. Burns' (1964 Repl.) §52-1246. This is buttressed by Regulation 2-113 of the Indiana State Board of Public Welfare detailing the procedures to be followed. Burns' Rules and Regulations (1970 Supp.) (52-1211)-1. (The Statute (p. 3a) and Regulations (pp. 4a-8a) are set out in full in the Appendix to Applicants' Brief.) Regulation 2-113 further provides that decisions of the SDPW may be appealed to the State Board of Public Welfare. Reg. 2-113(f).

The uncontroverted evidence heard by the district court disclosed that not one of the Applicants pursued an appeal to the SDPW or to the State Board of Public Welfare. Hence, the district court found that:

> "Under Indiana law each claimant is provided with a right to appeal any decision made by the case workers or supervisors at the county level, whether it be a denial of the right to file an application, a denial of assistance after the filing of an application, or dissatisfaction with the amount of the grant. The appeal procedures provide a right to have the decision reviewed by the State Department of Public Welfare and if still dissatisfied with the decision, a second appeal may be had to the State Board of Public Welfare. None of the plaintiffs testified that they appealed the county decision. Only one of the witnesses, Toni Davis, testified that she appealed to the State Department of Public Welfare, but not to the State Board of Public Welfare. Defendant Stanton, Director of the County Department of Public Welfare, testified the file does not record any appeal taken by any of the plaintiffs." (A. 211-212).

On the basis of its findings, the district court concluded that:

> "We therefore conclude that none of the plaintiffs appealed the various decisions made at the office level of the County Department. Having so failed to exhaust the administrative appeal procedures provided, we find a failure on the part of the plaintiffs to exhaust their administrative remedies through the state administrative procedures." (A. 212).

Applicants argue that they cannot be required to exhaust state administrative remedies since their action was under 42 U.S.C. §1983 and since the state administrative remedies are inadequate. For authority, Applicants rely

upon the cases of *Monroe v. Pape,* 365 U.S. 167 (1961); *McNeese v. Board of Education,* 373 U.S. 668 (1963); *Damico v. California,* 389 U.S. 416 (1967) *(Per Curiam); King v. Smith,* 392 U.S. 309, 312, n. 4 (1968); and *Houghton v. Shafer,* 392 U.S. 639 (1968) *(Per Curiam). Contra, Metcalf v. Swank,* 305 F. Supp. 785 (N.D. Ill. 1969).

Dismissal for failure to exhaust is an abstention doctrine. It implies that the court has jurisdiction (in this case that substantial federal questions are presented) but that the district court will stay its hand, for the time being, in the interest of state-federal relationships. If substantial federal questions have been presented then this Court should have reversed summarily as it did in *Houghton v. Shafer, supra,* and *Damico v. California, supra.* That this Court noted probable jurisdiction in this case rather than summarily reversing the decision of the district court as was done in *Damico v. California, supra,* and *Houghton v. Shafer, supra,* suggests that this Court may question the soundness of its decisions in the cases upon which Applicants rely for reversal of the district court.

The question posed is whether dissatisfied welfare applicants should be permitted to flagrantly circumvent established, orderly, state administrative remedies before their cases are heard in the federal courts. In a long line of decisions prior to this Court's decision in *Monroe v. Pape, supra,* the law was well established that state administrative remedies should be exhausted before resort was had to the federal courts for relief. *Harrison v. N.A.A.C.P.,* 360 U.S. 167 (1959); *Martin v. Creasy,* 360 U.S. 219 (1959); *Stefanelli v. Minard,* 342 U.S. 117 (1951); *Alabama Public Service Commission v. Southern Railway Co.,* 341 U.S. 341 (1951); *Burford v. Sun Oil Co.,*

319 U.S. 315 (1943). The SDPW submits that it would be well for this Court to reconsider its position in *Houghton, King, Damico, McNeese* and *Monroe* as applied to cases of the sort before it. See Justice Harlan's dissent in *Damico v. California, supra,* at pp. 417-420. That the *Damico* line of decisions is of recent vintage would not preclude this Court from reviewing its soundness. *See, Swift & Co. v. Wickham,* 382 U.S. 111 (1965), over-ruling, as unsound, *Kesler v. Department of Public Safety,* 369 U.S. 153 (1962), decided less than three years before *Swift & CO.*

All decisions of the county department affecting an applicant for or recipient of assistance are subject to review by the SDPW. Burns' §52-1246; Reg. 2-113(a). A decision of the SDPW may be further appealed to the State Board of Public Welfare. Reg. 2-113(f). At every stage of the administrative process, the applicant for or recipient of assistance must be promptly notified of any decision regarding assistance, and must be notified of her right to appeal to the next level. Reg. 2-113(a) and (f). Hearings are informal. The applicant may be represented in person or by counsel. The applicant or her representative has the right to present evidence, cross-examine opposing witnesses and to examine all documents and records used at the hearing. Reg. 2-113(d). Parenthetically, under the Indiana Rules of Procedure governing civil actions generally, a party to welfare administrative proceedings may avail herself of the full panoply of discovery tools available to a litigant in any action in any court in the State. Rule TR. 28(F), Indiana Rules of Procedure. Rule TR. 28(F) provides that "[w]henever a hearing before an administrative agency is required, parties shall be entitled to all the discovery pro-

visions. . ." of the Indiana Rules of Civil Procedure governing trial actions. Furthermore, the Rule provides that ". . . [p]rotective and enforcement orders shall be issued by a court of the county where discovery is being made or where the hearing is to be held . . . ."

The Indiana discovery rules are at least as broad, and probably more so, as the discovery provisions of the Federal Rules of Civil Procedure. The SDPW knows of no other State which affords the full discovery rights of a civil litigant to parties proceeding before an administrative agency. At all levels, prompt action on the part of the welfare department is required. Significantly, all corrective action is fully retroactive. Reg. 2-113 (c).

Applicants, at pages 25-27 of their brief, argue that exhaustion is not required where the administrative remedy is inadequate or futile. The Applicants attack on the state administrative procedures, governing welfare appeals, is manifold, myopic, misconceived and without merit. Whether the department would declare one of its regulations unconstitutional or invalid adds nothing to this case. Applicants ignore the fact that they have challenged certain practices under the Regulation in question in this case which they claim are not authorized by the Regulation. Whether the practices to which they advert exist or are condoned or approved by the SDPW are matters which can best be resolved or determined at the State Department or State Board level. For instance, since all the Applicants neglected to appeal the County determinations to the State Department and the State Board, there is no sound basis for determining whether the practice alleged does in fact exist or whether it is condoned or approved at the State level. Furthermore, if challenges to the validity of its Regulations are made during the process of administrative appeals within the agency, the agency

does have an opportunity in which to take corrective action.

That all of four appeals were taken from determinations of the Marion County Department of Public Welfare in the preceeding year to the SDPW and that the county decisions were sustained, shows no more than that few appeals are taken. Certainly none of the Applicants took appeals. The Applicants' additional allegations of procedural deficiencies in the administrative process merit no attention. The procedures adopted by the welfare department are more than adequate. *See Metcalf v. Swank,* 305 F. Supp. 785 (N.D. Ill. 1969).

To support their argument that they should not be required to pursue their administrative remedies before the welfare department, the Applicants rely heavily upon a note appearing in the Columbia Law Review. Note, *Federal Judicial Review of State Welfare Practices,* 67 Colum. L. Rev. 84 (1967). The note is a broad indictment of administrative remedies before the welfare departments of the various states. It is so broad as to be of no use in analyzing the efficacy of administrative review before the Indiana Welfare Department. The Note neither purports to, nor in fact does it treat the Indiana scheme.

Turning to the Indiana scheme, enough cannot be said of the significance of the availability of full discovery rights in the administrative proceeding. It provides for all the discovery tools available in the federal district court. Nowhere, do the Applicants display cognizance of or acknowledge the availability of discovery procedures in the Indiana Administrative appellate structure. *In short, the fact finding forum the Applicants sought in the federal district court was already available to them before the Indiana Welfare Department.*

In addition to the reasons usually cited for the exhaustion doctrine, the exhaustion of administrative remedies could have served two additional important functions, in this case. First, it places the issues squarely before the agency and gives it an opportunity to take corrective action. Secondly, it serves to develop a record upon which a federal court can make its determination without the necessity for further proceedings there. Let us turn to the facts of this case to determine how requiring the Applicants to exhaust their administrative remedies could have avoided the present action or, alternatively, conserved the valuable judicial time of the federal courts. First of all, let us assume that it is the practice of certain case workers attached to the Marion County Department of Public Welfare to require a recently separated applicant to file for a divorce or legal separation as a condition precedent to obtaining assistance or that it is the policy of the County Department to require a divorce or legal separation under these circumstances. Had Applicants pursued their administrative remedies, the SDPW and the State Board of Public Welfare would have had an opportunity to determine whether in fact such a practice existed or that such a practice, if it existed, was violative of the Regulation in question and taken corrective action. With these Applicants we will never know what was the position of the SDPW because these Applicants never appealed to the SDPW. Significantly, it is highly questionable that Applicants can ever satisfactorily prove that the practice they claim exists does in fact exist *statewide*, a condition necessary to invoke the provisions of 28 U.S.C. §2281, absent some affirmative action by the SDPW itself. Only an appeal to the SDPW would satisfactorily dispose of the issue.

If the Applicants had exhausted their available administrative remedies, the district court action might have been unnecessary or the district court could have made its determination on the basis of the record made in Applicant's appeal through the administrative hierarchy. The district court has already conducted a lengthy evidentiary hearing. If this Court reverses and remands, in all likelihood, we can expect further proceedings in the district court. There is nothing in this record to show with any degree of probability that the sole reason Applicants were denied assistance was their alleged claim that they had not filed for a divorce or legal separation. It is the Applicants' burden to show that the sole reason for a denial of assistance to them was their failure to file for or obtain a divorce or separation. This record obviously does not disclose that Applicants' sustained that burden. However, had the Applicants exhausted their administrative remedies, that record could have been obtained and attached to their complaint as an exhibit, had it been necessary to file a suit in the federal court and the federal court could have disposed of the case on the pleadings, a considerable saving of judicial time.

There is a touch of irony to the Applicants' arguments that the administrative remedies provided by the State of Indiana are inadequate and that the exhaustion is a futile gesture. Not having tried available state administrative remedies, the Applicants can hardly be heard to complain that the remedies are inadequate or that their pursuit would be futile. All of the Applicants were notified in writing of their right to appeal the county decision. All of the Applicants testified that they understood that they had a right to appeal the county decision. All of the Applicants were represented by attorneys of the local

Legal Services Organization. Yet not one of the Applicants pursued an appeal. Significantly, several of the Applicants expressed an interest in appealing the county decision. (A., Bowman, 123-125; Carter, 132-133; Steele, 142-143). At least two of the Applicants testified to facts from which it could be inferred reasonably that they believed the district court action to be the appeal to which they were informed they had a right when assistance was denied by the county department. (A., Bowman, 123-125; Steele, 142-143). And finally, the SDPW is somewhat troubled by the haste with which and circumstances under which the action below was initiated. Apparently, at least one of the Applicants was not denied welfare assistance by the county until some time after the district action was initiated. (A., Steele, 142-143, 144). Another Applicant had been denied welfare assistance for a child not in her custody at the time this action was initiated in the lower court. (A., Enoch, 155). And then there is the remark of counsel for the Applicants that "... she [plaintiff, Enoch] really doesn't have anything to do with the lawsuit, it's the lawyers who filed it." (A. 152).

And finally, no consideration of the exhaustion issue would be complete without including some mention of this Court's decision in *Goldberg v. Kelly,* 397 U.S. 254 (1970). It is ironic indeed, that this Court decided in *Goldberg* that the full panoply of constitutional due process must be observed in state administrative proceedings to terminate welfare assistance, while, on the other hand, as a result of *Damico, supra,* this Court permits welfare applicants to flagrantly circumvent the very administrative procedures that this Court decided were required in *Goldberg.* Having decided that certain constitutional protections attached to administrative welfare hearings, this

Court should now compel AFDC applicants to pursue and exhaust those administrative procedures.[1]

---

1. The Applicants present a detailed argument in Parts III and IV of their brief that the district court had jurisdiction of the Applicants' claim under 42 U.S.C. §1983 and 28 U.S.C. §§1343(3) and (4). The SDPW presents no arguments in this brief directed to these contentions of the Applicants. Given the SDPW's view of proceedings in the court below and the posture of this case on appeal, the issue of the district court's jurisdiction, a single judge presiding, to resolve an alleged conflict between the Indiana Regulation and the Social Security Act is not before the court in this appeal and would be better left for the United States Court of Appeals for the Seventh Circuit. See, *Swift & Co. v. Wickham*, 382 U.S. 111 (1965). The jurisdictional issue and a related exhaustion of administrative remedies issue (HEW) should be left for another day. *See, Lewis v. Martin*, 397 U.S. 552 (1970), Justice Black dissenting, at pp. 560-563.

CONCLUSION

In the alternative, this Court should dismiss this appeal for want of jurisdiction, or this Court should dismiss and remand with leave for Applicants to pursue their appellate remedies in United States Court of Appeals for the Seventh Circuit or this Court should affirm the judgment of the district court.

Respectfully submitted,

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SUPREME COURT, U.S.
70-5082
Supreme Court, U.S.
FILED
AUG 30 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM 1970

NO. 6744

LAVERNE CARTER, *et al.*,
Appellants (Plaintiffs below),

v.

WAYNE STANTON, *et al.*,
Appellees (Defendants below).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRIEF OF APPELLEE WAYNE STANTON

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For the Southern District of Indiana
Indianapolis Division

BRIEF OF APPELLEE WAYNE STANTON

ERRATUM:

Page 17, last paragraph,
"discreation" is a misprinting of discretion.

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Appellees (Defendants below).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRIEF OF APPELLEE WAYNE STANTON

Wayne Stanton, defendant below, concurs in the statement of the Appellants concerning the Opinion Below.

QUESTIONS PRESENTED

1. Whether a substantial constitutional or federal question is raised by a challenge to Indiana Public Welfare Regulation 2-402(b) which uses a six-month continuous ab-

sence of a parent as a condition for granting AFDC benefits —but which also contains an exception allowing immediate benefits within that period under exceptional circumstances of need and a determination that the absence of the parent is actual and bona fide.

2. Whether the state administrative remedies were adequate, prompt and available to the claimants.

3. Whether on the record of this case the claimants should have exhausted the state administrative remedies before seeking relief in the federal court.

STATUTES INVOLVED

The defendant Stanton concurs that the statutes and the regulations listed by the claimants are among those involved in this case.

In addition, the defendant Stanton lists the following statutes and regulations which are set forth in his Appendix hereto:

(1) Indiana statute on dependent children—amount of assistance. Indiana Acts 1936 (Spec. Sess.) Chap. 3, Article 72, p. 12, as amended Acts 1967, Chap. 270, § 1, p. 799 [Burns' Cumulative Pocket Supplement Vol. 10, Part 1, § 52-1241];

(2) Indiana statute on dependent children—application for assistance. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 73, p. 12 [Burns' Indiana Statutes Annotated 1964 Repl. § 1242];

(3) Indiana statute on dependent children—investigation. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 74, p. 12 [Burns' Indiana Statutes Annotated 1964 Repl. § 52-1243];

(4) Indiana statute on dependent children—granting of assistance. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 75, p. 12 [Burns' Indiana Statutes Annotated 1964 Repl. § 52-1244]; and Indiana State Board of Public Welfare Regulation 2-404, Burns Ind. Admin. Rules & Regs. (52-1244)-1 (1969).

(5) Indiana statute on dependent children—certificates. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 76, p. 12 [Burns' Indiana Statutes Annotated 1964 Repl. § 52-1245].

(6) Indiana statute on Township Trustee as overseer of poor. Indiana Acts 1935, Chap. 116, Article 1, p. 432 [Burns Indiana Statutes Ann. 1964 Repl. § 52-144].

(7) Indiana statute as to duties of Trustee and service to be rendered. Indiana Acts 1967, Chap. 251, Article 1, p. 655]Burns Cum. Pocket Supp., Vol. 10, Part 1, § 52-148].

(8) Indiana statute on temporary aid by Township Trustee. Indiana Acts 1935, Chap. 116, Article 7, p. 432 [Burns Indiana Statutes Ann. 1964 Repl. § 52-150].

STATEMENT

The claimants' Statement has slighted some critical facts. They are abstracted below.

1.

The Statutory Framework

In addition to the claimants' summary of the administrative framework (Appellants' Br. 5) the administrative review procedures include the following:

The county department must at once report to the state department its decision upon each AFDC application. (Appellants' App. 3a).

Upon its own motion, the state department may review any decision of the county department and may consider any application not decided by the county department within a reasonable time. (ibid).

An applicant or recipient may appeal to the state department (a) if she believes her civil or constitutional rights have been violated; or (b) if she believes that the policies of either department are not reasonable or equitable and that they affect her adversely; or (c) if any application is not acted upon by the county department within a reasonable time. (Appellants' App. 3a).

Fair hearings are expressly mandated. (Appellants' App., 3a, 5a-7a).

Prompt state department action is required on each appeal. It must immediately write the applicant fixing a date of hearing within the next three weeks, with a copy to the county department. The county departmenf must then immediately review the situation and if an adjustment is indicated must notify the appellant and the state department—all within two weeks after receipt of notice of appeal. (Appellants' Br., 4a-5a).

After the state department appeal hearing the person appealing is notified that the State Board of Public Welfare will personally review the case if so requested within the next ten days. (Appellants' App. 6a, 7a).

2.

Proceedings Below

The defendant rejects the claimants statement that the referral of AFDC applicants to the Township Trustee for interim benefits violates the Social Security Act of 1935. (App. Br. 7). The complaint below did not challenge such referrals. They should not be made a subject of challenge for the first time on appeal.

3.

Filing of AFDC Applications

With respect to the filing of AFDC applications the record discloses the following—

Of the five claimants who testified, Carter, Bowman, Enoch and Steele all admitted on cross examination that they were not denied the right to file and in fact each did file an application. (App. 121, 132, 140, 151). Claimant Hall filed an application two days after separation from her husband. (App. 162-163).

In addition to the claimants, six other applicants testified, four for the claimants and two for the defendants. Witnesses Davis, Luke and Tanner filed applications during the same month in which they claimed their spouses left home. (App. 106-107, 92, 93, 73). Witness Watkins separated from her husband in June 1970, filed an application in August and began receiving benefits the first of the next month. (App. 84). Witness Blankenbackler was not denied the right to file an application. (App. 170). Witness Smith "was given an application immediately the first day" she went to the county welfare department and was not denied the right to file. (App. 172).

Ernest McGruder—holder of a Masters Degree in social work from Indiana University, and chief supervisor for the family services division of the county welfare department—affirmed that any person expressing a desire to file an application can do so. (App. 49). Keith Carver, intake caseworker, never denied anyone the right to apply for public welfare. (App. 176). Lois Hartzler, another caseworker in the intake division of the county welfare department, never denied anybody an application and advised each person of the right to apply. (App. 187).

The defendant Wayne Stanton, for the past eleven years Director of the Marion County Department of Public Welfare, stated tht the county department accepts "an application on any individual that wishes to file an application for any of our programs." (App. 191).

4.

Concerning Divorce or Separation

Ernest McGruder, the chief supervisor, testified that there is no policy wherein one must sue for divorce or legal separation before filing an application or receiving AFDC assistance thereon. (App. 50). Keith Carver, intake caseworker, said there is no requirement for the filing of legal separation or divorce papers before filing an application for AFDC assistance. (App. 177). Lois Hartzler, caseworker, has never told an individual that she would have to file for divorce or legal separation before she could receive AFDC benefits. (App. 187). And the defendant Stanton confirmed that the county has no rule, regulation, practice or policy under which a person must file a complaint for divorce or separation in order to receive assistance or even make an application. (App. 191-192).

Within three months after their spouses allegedly left, the claimants Enoch and Hall each received AFDC assistance. Claimant Hall never filed for divorce; claimant Enoch filed at some unknown time. (App. 151, 163).

Claimant Steele joined in this suit against the defendant Stanton before applying for assistance. She filed for divorce the same month her husband departed. She was denied aid, but testified that she was living with her folks and didn't have any problems of need. (App. 139, 141, 142). Claimant Carter was denied aid. Carter signed papers to file for divorce before filing for AFDC benefits. (App. 129, 130). Claimant Bowman started receiving AFDC assistance the first part of June 1970 and did not file for divorce until approximately two months later. (App. 117, 125).

Witness Watkins started receiving AFDC benefits less than three months after she and her husband separated but never filed for divorce. (App. 184). Witness Luke allegedly started receiving welfare assistance approximately five months after filing her application. Luke filed for divorce before receiving AFDC benefits. (App. 191). Witness Davis was denied aid and testified that she filed for legal separation after filing her application for welfare assistance. (App. 107). Davis, who had separated five or six times before filing her application (App. 106), testified that filing for divorce had nothing to do with receiving any welfare benefits. (App. 111). Witness Tanner stated that she started receiving AFDC benefits approximately one month after separation and filed for divorce before applying. (App. 73). Witness Blankenbackler said that she started receiving AFDC benefits approximately two months after separation. (App. 169). Blankenbackler stated that she was not requested or required to file for

divorce or legal separation. (App. 170). Witness Smith started receiving welfare assistance approximately one month after her husband left home. (App. 171). Smith also stated that she never filed for divorce or legal separation. (App. 172).

5.

State Wide Practices

State wide practices have no place in this appeal. The record is devoid of evidence about them. The claimants failed to produce witnesses or to show that deponents were unavailable for testimony at this trial. No director of any county department except Marion was produced. And whatever depositions the claimants tendered did not receive a ruling of admissibility. Nor did the claimants call the matter to the court's attention after it was taken under advisement.

6.

Concerning Six Month Period

Chief supervisor McGruder, caseworkers Carver and Hartzler, and county director Stanton all testified that the six month period in the regulation is waived regularly. (App. 52, 176, 187, 192). Stanton said that for all persons applying for AFDC benefits where there has been a separation from the spouse, the county evaluates the need factor, the emergency and magnitude of the need, and whether the separation is of a short term, repetitive, continuous, or a common experience, as opposed to what appears to be permanent or bona fide continued absence. (App. 191).

McGruder himself makes the final determinations to disregard the six month continuous absence measure. His assistant does so in McGruder's absence. Sometimes he discusses the problem with Stanton. (App. 51)

7.

Standards of Need

Ernest McGruder testified that need is determined by a set standard for the state of Indiana. It is used state wide as to what a family of a certain size needs monetarily to maintain a standard of living comparable to decency and health. The standard is applied objectively to everyone who applies for welfare. (App. 49). Standards of need for persons separated less than six months are the same as for those separated for more than six months. (McGruder App. 51, Stanton App. 195).

Ernest McGruder also testified that in determining the person's need DPW Form 350 is used. Form 350 is a table which establishes how much a family of a certain size needs and which has a breakdown as to how much a family needs for food, clothing, fuel, utilities, etc. (App. 58). Income is also considered. (App. 58). These determinations or factors are the same for parties separated six months or less than six months. The same table is used for everyone. (App. 59).

8.

Interim Assistance Sources

Although the county department of public welfare decides on an AFDC application within thirty days, the county department is not the agency to provide instant assistance.

(Stanton, App. 195). By statute this is delegated to the Township Trustee. The Trustee carries this responsibility for the short term or first part of the need situation until there are signs of bona fide separation. (App. 204-205).

Stanton did not say that the Trustee's primary responsibility continues for the first six months of a separation.

Each named claimant who requested interim assistance from the Township Trustee received it in various forms. (App. 116, 134, 141, 148, 165). Stanton testified that there are nine Township Trustee offices in Marion County. (App. 194). Stanton further testified that he knew of no limitation on what the Township Trustee could provide and that the Township Trustee's assistance is in the form of money, food, furniture, utilities, groceries, school rentals and school lunches. (App. 194-195).

In addition to the Township Trustees, other sources for quick interim relief include Volunteers of America, Salvation Army, Red Cross, Catholic Social Services, Urban League, and many churches having welfare service departments. (App. 194-195).

9.

Administrative Appeal

None of the claimants appealed the decision of the Marion County Department of Public Welfare as to benefits received or denied by the county department. (App. 194). Claimants Carter and Bowman admitted that they were advised of their right to administratively appeal the county decision and, although represented at that time by an LSO attorney, failed to take such appeal. (App. 122, 132).

Claimant Steele filed this lawsuit before going to the welfare department for benefits. (App. 142, 143, 144).

Defendant Stanton testified that his department always advises anyone of the right to appeal the county's decision and that such appeal is scheduled within a week or two and decided in approximately two weeks thereafter. (App. 193, 197).

Witness Davis appealed the county decision to the state department of public welfare but did not appeal to the state board of public welfare. (App. 212). None of the other witnesses appealed the county decision or stated any dissatisfaction.

10.

Judgment of the District Court

The defendant Stanton concurs with that portion of the Court's amended entry on motions to dismiss as shown by the claimants on pages 10 and 11 of their Brief.

SUMMARY OF ARGUMENT

The claimants predicate their whole case on their charge that contrary to their constitutional and federal rights they were denied the right to apply for or to obtain AFDC aid during the first six months of their spouse's absence, unless they first filed for divorce or legal separation. They rest this charge upon a misunderstanding of Indiana Public Welfare Regulation 2-402(b) and its application.

And they ignore the obvious—that the regulation is not arbitrary or rigid but is flexible in meaning and application.

Proper construction of the regulation and examination of the facts do not support the claimants' charge. The regulation is entitled to a construction of constitutional validity under the rule favoring such a construction where possible. *Harmon v. Brucker,* 355 U.S. 579 (1958). The claimants therefore are not excused from their duty to exhaust their administrative remedies, which were available, adequate, speedy and regularly invoked by others.

I

The regulation under attack is *not* unbending. It does not rigidly withhold assistance while the six month absence is running. Instead, it expressly authorizes *immediate* assistance at any time after application if the absence is actual and bona fide and if the need meets the uniform standards. Its flexibility is apparent on the record. Many applicants—including some of the claimants—received AFDC benefits within three months after separation.

"Actual and bona fide absence" simply articulates the kind of absence which must appear from the facts in every dependent child case involving desertion or separation of a parent. Some finite duration of time must precede a determination of such absence. In separation or desertion cases, it cannot be adjudged as actual and bona fide the instant it begins. But aid is frequently granted, as the record proves, long before the six month period expires.

The "exceptional circumstances of need" phrase in the regulation creates no conflict with § 406(a) of the Social Security Act or HEW regulations. The state statutes and

published guidelines impose uniformly the same standards of need for all dependent children, including those within the ambit of Regulation 2-402(b). Therefore, the phrase means simply "need" and invites no discrimination among children. And no discrimination is practiced.

The policies and practices under the regulation are equally free of any constitutional or federal infringement. They require neither an invariable six month absence nor an earlier suit for divorce or legal separation as a condition for requesting or obtaining aid. And the record so shows. Thus vanishes the foundation for the claimants' additional charges of invasion of privacy and interference with marriages.

In their pleadings the claimants made no complaint about utilization of Township Trustees for instant assistance pending county welfare department determination of absence and need. Only in their brief here do they for the first time voice such an objection. They are now too late. And in any event, such interim use of those sources of benefits brought the claimants prompt help, not harm.

II

With no violation of their constitutional and federal rights, the claimants have no excuse for bypassing the administrative remedies which the state offered them. These remedies are shown not only to be regularly enlisted by other applicants and recipients but also to be easily invoked, swift, adequate and fair. They were safeguards built into the structure of the state and county welfare systems.

The state by both statute and regulation held out to every applicant and recipient the right of appeal from

the county department decisions—whether based on a denial of the right to file, a denial of aid, a belief that civil or constitutional rights have been violated, or a feeling that policies are not reasonable or equitable and adversely affect the person—to the state department, and thence if still displeased, to the State Board of Public Welfare for personal hearing. No claimant availed herself of these rights.

Bare allegations of invalidity of the regulation, and bare allegations that its application contravened constitutional or federal rights, do not alone excuse the claimants' disregard of those administrative remedies.

III

As this Court has lately said, the problems presented by complaints such as this one are not the business of this Court. *Dandridge v. Williams*, 397 U.S. 471 (1970).

If the claimants prevail here, the federal courts will in effect become the tribunals for administrative remedies and the ultimate welfare administrators for each dissatisfied applicant.

The federal courts should not be required to substitute their discretion for the expertise of trained administrators.

ARGUMENT

I

NO SUBSTANTIAL FEDERAL OR CONSTITUTIONAL QUESTION INVOLVED

As the claimants concede, there is no substantiality to an asserted constitutional or federal question when the "question is obviously without merit." (Appellants' Br. 13). Here, the complaint purports to allege facts creating a substantial constitutional or federal question. However, the evidence in the hearing before the lower court failed to support those allegations, and "substantiality" disappeared. It follows, therefore, that neither the regulation under attack nor the practices in applying it create a substantial constitutional or federal question, and in effect the court so found.

A

Regulation Valid on Its Face

Two reasons sustain the validity of Indiana Public Welfare Regulation 2-402(b). First, it provides flexibility in the concept of continued absence. Second, it applies only uniform standards of need. The defendant Stanton here deals with each in that order.

Flexible Measure of Continued Absence

The regulation does not necessarily withhold assistance while awaiting expiration of the six month period of absence. There is no rigid six month waiting period under the Indiana regulation to make it unreasonable, unconstitutional

or inconsistent with the Social Security Act. The regulation, instead, authorizes immediate assistance at any time after application if circumstances of need exist and if the absence is actual and bona fide. Surely, this is not unreasonable. As stated by the three-judge court in rehearing *Damico v. California*, 2 Pov. L. Rep. § 10,478 (N.D. Calif. 1969):

> "We hold that under the Social Security Act, the state may not deny AFDC benefits to otherwise eligible children by means of a conclusive presumption that an absence is not 'continued' before the expiration of three months. In so ruling, we do not hold that the state may not set up a reasonable time period as a rebuttable evidentiary guide to determine what constitutes a 'continued absence' in the absence of other factors. The state correctly argues that 'continued absence' cannot be attained in an instant but must endure for some period."

"Continued absence" is a phrase that state Regulation 2-402(b) inherited through descent from the Social Security Act (42 USC 606(a)) which employs the identical phrase in defining a dependent child. That Act contains no definition of "continued absence" and the pertinent HEW regulation offers no substitute for an exercise of judgment by a caseworker or other administrative agent. The Indiana regulation in its flexibility authorizes this exercise of judgment in the express exception to the six month period. All that is required is a finding that the absence is actual and bona fide. The sole function of the six month yardstick is to provide a *conclusive* finding of continued absence when other factors do not reveal sooner that the absence is actual and bona fide. That the flexibility inherent in the regulation is frequently applied clearly appears from the record in this case. (App. 52, 176, 187, 192).

This differentiates the regulation here from the statute in *Shapiro v. Thompson*, 394 U.S. 618 (1969), and the regulation in *King v. Smith*, 392 U.S. 309 (1968), both relied upon by the claimants.

Shapiro involved welfare awards rigidly conditioned on completion of a one year residence in the state. The decision, however, rested, not upon the distinction made between eligible and ineligible applicants as a per se invasion of some fundamental interest, but upon the resulting impingement on the constitutionally protected right to travel between states. Moreover, *Shapiro* found nothing allowing flexibility in application of the residency requirement regardless of welfare needs.

In *King*, the Court properly struck down a capricious definition of "parent" in Alabama's AFDC regulation. Not only did the Alabama provision assault humane sensibilities by using the denial of benefits to needy children as a weapon to enforce a preferred morality in the conduct of the mother. It also contained a rigidity that allowed no administrative discretion to award benefits to children of mothers upon whose proclivities the regulation frowned. The Alabama denial of benefits to the class of children with erring mothers while granting benefits to the class with mothers not given to forbidden conduct was, the defendant feels, a callous denial of equal protection of the laws.

The case at bar involves no such circumstances.

Dandridge v. Williams, 397 U.S. 471 (1970) teaches that a state need not shackle itself by absolute negation of discreation and judgment, but instead may create classifications of persons and of circumstances reasonably appropriate to the social end. There, Maryland had prescribed ac-

ceptable standards of AFDC benefits per child, but had also fixed a maximum for any one family. The challenge rested on a claimed denial of equal protection because children of the largest families were denied the same amount per capita which children of smaller ones received. The logic by which the Court reached its decision is so controlling here that at the risk of prolixity the defendant repeats it:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70. 'A Statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426.
>
> • • •
>
> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain pro-

> cedural safeguards upon systems of welfare administration, Goldberg v. Kelly, ante. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients: Cf. Steward Mach. Co. v. Davis, 301 U.S. 548, 584-585; Helvering v. Davis, 301 U.S. 619, 644. The judgment is reversed.

As in *Dandridge*, so here. The Indiana regulation, imperfect perhaps, nevertheless is flexible, reasonable, free from absolutes and without rigidity. It allows needed benefits to needy children regardless of the duration of absence, when it constitutes "continued absence" as the facts of each case may show. No continued absence can be determined instanter. It must endure for some measurable period of time. Hence, it is fallacious for the claimants to argue that a duration of time, inescapably necessary to determine "continued absence", creates per se an unconstitutional classification of children simply because a maximum limit is fixed for the duration.

The Indiana regulation consists with both the Social Security Act and the federal regulations thereunder. For the Indiana regulation does not impose an unvarying minimum period of absence. Nor order a denial of benefits where that period is not attained. To the contrary, the regulation sets a *maximum* bracket of time, and tells the county department that it may exercise judgment as to the actuality of absence upon the facts of the case within that bracket but that beyond the maximum time the presumption of continued absence is conclusive. Thus, the six month period is actually a safeguard in all of those cases where other facts may be obscure.

This differentiates the instant case from *Doe v. Hursh*, 2 Pov. L. Rep. § 11,753 (D. Minn. 1970) and *Damico v.*

California, 2 Pov. L. Rep. § 10,478 (N.D. Calif. 1969) upon which the claimants stand.

In *Doe*, the Minnesota statute created an *irrebuttable* presumption that separation for less than three months was not "continued absence from home." No evidence was permitted by which this presumption could be overcome. Children were ineligible even if the absent parent had left permanently or had been ordered out of the house in a divorce action. In fine, the period of absence was the *minimum* with no exceptions. The Indiana regulation contains no such rigid prohibitions, but instead flexibly permits immediate assistance.

Damico dealt with an arbitrary "sue or starve" regulation. It prohibited any aid prior to three months of continued absence unless legal action was taken to terminate the marriage or the parent was deported or incarcerated. And it conclusively presumed that otherwise the absence was not "continued" until the passage of the three month period. The "conclusive presumption" which flawed the California regulation is missing from the Indiana regulation. This clearly differentiates the two.

Neither the Social Security Act nor the HEW regulations forbid state regulations or administrative practices which define continued absence in maximum terms but hedged by such exceptions as the Indiana regulation contains. "HEW's recommendation" that time specifications as definitions of continued absence be eliminated as soon as the development of administrative controls and staff skills permits is nothing but a recommendation.

As the federal courts judicially know, the states participating in the AFDC program are required to submit their AFDC plans for the approval of the Secretary of

Health, Education and Welfare; and those plans must conform with the several requirements of the Social Security Act and with the rules and regulations promulgated by HEW. Such approval and conformity are conditions for the grant of federal matching funds. Indiana has long participated in the program and received matching funds. Yet there is no evidence of any indication from HEW that Indiana Regulation 2-402(b) is inconsistent with the Social Security Act.

Uniform Standards of Need

The "exceptional circumstances of need" phrase in the Indiana regulation creates no conflict with § 406(a) of the Social Security Act. The phrase must be viewed within the frameword of the controlling state statute, as well as its application. Burns Indiana Statutes Ann. § 52-1241. That statute demands uniformity in standards of needs. In obedience, State Form DPW 350 sets down the detailed categories and measurements of need for a dependent child with no distinctions among children. (App. 58, 59).

The regulation under attack was promulgated by the very state agency which applies it in practice. In addition to what the statute imposes, the true test of the phrase is not what it might convey in the abstract, but rather what consequences flow from its practical application by the same agency. The administrative body responsible for both adoption and enforcement of a regulation is the best body to describe its effect and its true construction. Such a body is the recognized source of experience and informed judgment to which courts and litigants alike have resorted for guidance. *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Federal Maritime Board v. Isbrandtsen* 356 U.S. 481 (1958).

In this case the chief supervisor of the family services division of the Marion County Welfare Department attested to the *uniform standard* of need utilized in *all* applications—

"Q. How is this study of need determined?

"A. There is a set standard for requirement for the State of Indiana, it is used State Wide as to what a family of a certain size needs monetarilly to maintain a standard of living compatible with decency and health, the standard is applied objectively to everyone who applies for welfare." (App. 49)

* * *

"Q. Mr. McGruder, with respect to a separation of the parties or I should say in absence of one of the parents, not a continued absence, I'm talking about, say, death of a parent or absence of a parent where it is more than six months, what are your standards of need with respect to an obligation [application] filed in that type of situation?

"A. The same standard need would apply, that applies to all applicants for welfare.

"Q. In other words, your standard of need for those of less than six months separation would be the same as it is for more than six months?

"A. Yes." (App. 51).

In the same regard, the defendant Stanton likewise answered—

"Q. Do you apply, Marion County Department of Public Welfare apply any different standard of need as to those cases where the parents have been separated for less than six months, as opposed to those where separation is over six months?

"A. No, we do not, it is the same standard."

(App. 195).

Abiding by the above cited rule of construction of administrative regulations, the correct practical interpretation of "exceptional circumstances of need" is simply that it invokes the same standards of need which obtain in the other categories of the AFDC program in Indiana.

Fair and reasonable construction of the regulation under attack therefore compels the conclusion that it is entirely valid and free from any impingement upon either constitutional or federal rights. And this becomes an even more compelling conclusion when the application of the regulation is next considered.

B.

APPLICATION OF REGULATION

The major attack on the application of the regulation concerns divorce and legal separation.

No Divorce or Separation Requirement

The claimants allege in their complaint, and here charge, that the Marion County Welfare Department has a policy or practice of denying within the six month period the right to complete and file an application, or denying assistance, unless the mother files for divorce or legal separation.

They are utterly wrong. This claim is refuted by the finding and decision of the three-judge federal court and the evidence which bottoms the finding. Since the court found no substantial constitutional question, it neces-

sarily follows that the court found against the claimants on their charge and their evidence of such a policy or practice.

As to the allegations that the claimants were denied the right to file, the finding and decision is buttressed by such evidence as the following. Of the five claimants who testified, four admitted that they had no trouble filing an application. (App. 121, 132, 140, 151). The remaining claimant, Lucy Hall, testified that she filed an application two days after her husband's departure and started receiving benefits less than three months later. (App. 163). Claimant Enoch started receiving benefits less than two months after she and her husband separated. (App. 151).

The defendant Stanton, the witness most certain to know the County's policy and practice, denied positively that any divorce or legal separation requirement exists as the following testimony proves: (App.191-192).

"Q. Do you have any rule or regulation or practice or policy with respect to the necessity of a person to file for divorce before he can file an application?

"A. We have no such requirement.

"Q. How about with respect to filing a divorce and receiving any assistance?

"A. We have no such requirement, that requires filing of divorce in order to receive assistance or make application for assistance.

"Q. How about with respect to filing application with respect to separation?

"A. We do not require a filing of separation on, or indication or statement of separation in order to make application or to receive assistance."

Ernest McGruder corroborates Stanton's testimony in these words: (App. 50).

> "A. There is no policy in the intake department of Marion County Welfare where one must file for divorce. That would have no bearing on whether or not they can file an application for assistance.
>
> "Q. How about filing for a legal separation?
>
> "A. That neither."

So does caseworker Hartzler. (App. 187).

> "Q. Have you ever told an individual, as you recall, they would have to file for divorce before they could file an application?
>
> "A. Never.
>
> "Q. Before they could receive any assistance?
>
> "A. Never.
>
> "Q. How about filing for legal separation?
>
> "A. Never."

The experience of claimant Hall and witnesses Watkins, Blankenbackler and Smith puts to rest the claimants charge. These applicants *all* received AFDC benefits less than three months after separation, yet *none* sought divorce or legal separation. (App. 163, 169, 170, 172).

From those facts, where does there emerge any pattern of requirement for divorce or legal separation suits before either applying for or receiving AFDC benefits?

In truth, neither policy nor practice requires the filing of a divorce or legal separation action as a condition for the application or the award of benefits. Filing for separation or divorce is but one of the many alternative proofs

which are accepted in the determination of "continued absence." Such a suit is *not* required. It is simply persuasive evidence if undertaken.

C.

INTERIM BENEFIT SOURCES

The claimants for the first time are challenging county welfare department referrals to the Township Trustee. Their complaint makes no mention of this. Clearly it is unfair for the claimants to create this issue for the first time in a brief to this Court. However, their charge is easily answered.

The claimants rest their challenge to the role of the Township Trustee on an unfortunate misreading of the facts of record. To illustrate, they claim in their brief that the defendant Stanton said "the primary responsibility for the first six months of a separation belongs to the Township Trustee. In his opinion, need and deprivation under the federal Act arise only when the Trustee stops giving assistance." (Appellants' Br. 21). Stanton said no such thing.

What Stanton really said is this: Within 30 days after the application, an applicant receives her check or her notice of denial. As far as "immediate" relief is concerned, numerous sources are available including the Township Trustee. (App. 194-195). By statute, he explained, the county welfare department is not the agency to provide "immediate" assistance. (App. 195).

The Township Trustee can provide this immediate assistance in various forms. (App. 195). He bears the primary responsibility "for the short term or first part of

the need situation," until there are signs that the separation is bona fide. (App. 204-205).

These signs, of course, can develop at any time within the first six months of separation.

"Immediate" assistance in the context of Stanton's testimony means *instant* assistance, continuing until AFDC aid is granted, or the need ends. Burns Ind. Stat. Ann. § 52-1243 (1964); Indiana State Board of Public Welfare Regulation 2-404, Burns Ind. Admin. Rules and Regs. (52-1244)-1 (1969).

This was clarified by chief supervisor Ernest McGruder (App. 67):

> "Q. Mr. McGruder, under state law, as it now exists, there is no matter [manner] whereby a person can go into the Welfare Department and receive a check and walk out on that same day, is it not true the Board must act and grant assistance before a check is mailed out?
>
> "A. To my knowledge, yes.
>
> "Q. In other words, the State of Indiana does not have a program like some states whereby the Welfare Department fulfills the need of emergency assistance for today for tonight's mean [meal], is that correct?
>
> "A. Right.
>
> "Q. Who does that in the State of Indiana?
>
> "A. Township Trustees."

The record reveals that the Township Trustee has a statutory duty to provide immediate assistance pending the processing of AFDC applications. (App. 195). In fact, of the five claimants who testified, all except one were

receiving interim assistance from the Township Trustee. The one exception, claimant Steele, admitted that she had no problems as far as need was concerned. (App. 141, 143). These facts refute the claimants' dramatic description of their plight and illustrate that relief in Indiana is available during any interim period while waiting AFDC assistance. (Burns Ind. Stat. Ann. § 52-144, -148).

The claimants inveigh against welfare department referral of applicants to the Township Trustee. Yet they make no complaint of similar referral to charitable and religious sources of interim aid. The county director in these referrals is simply performing a compelling humanitarian service.

II

FAILURE TO INVOKE OR EXHAUST ADMINISTRATIVE REMEDIES

Whether this federal suit was premature hinges on the answer to two questions—first, were state administrative remedies readily available, adequate, speedy, and easily invoked; and second, if so, were the claimants obliged on the record of this case to exhaust those remedies before soliciting the jurisdiction of the federal judiciary?

The answer to both is yes.

A

The Remedies Meet the Tests

The nub of the alleged grievance is that each claimant was denied the right to file an application or denied a grant of assistance; and that each denial was based either on an unyielding requirement that the mother be separated

from her husband for six months or on an unwritten requirement that she must file for divorce or legal separation. Those two grounds, and no others, are asserted as the very foundation of this lawsuit. (Appellants' Br. 6).

Effective administrative remedies are provided by statute and regulation of the state for both of those alleged grievances. Burns Ind. Stat. Ann. § 52-1246 (1964); Indiana State Board of Public Welfare Regulation 2-113 (Appellants' Br. 3a, 4a).

Every person seeking AFDC help, including every claimant here, is given the right to appeal to the state department of public welfare, and then to the state board itself if, inter alia—

(a) The county department refuses to accept an application for assistance;

(b) An application is not acted upon within the time limit established by the state department;

(c) An applicant or recipient is dissatisfied with the amount of the award;

(d) An application is denied;

(e) An applicant or recipient believes her civil or constitutional rights have been violated; or

(f) An applicant or recipient believes that the state or county department policies are not reasonable or equitable and that they affect her adversely.

Every applicant is informed of the right of appeal by printed information on the notice of decision by the county department. (App. 52). Each applicant not only is notified in writing of her right to appeal but also must be advised of such right with each grant, denial or modification of award. (Appellants' Br. 4a).

The appeal is scheduled within a week or two and decided approximately two weeks thereafter. (App. 197). If the person appealing is not satisfied with the state department decision, then the state board of public welfare will review her case personally if a specific request for such review is made within ten days following receipt of the appeal decision. (Appellants' Br. 7a). Again the person appealing is notified of this right. (Appellants' Br. 7a).

Fair hearings are commanded. (Appellants' Br. 3a, 5a, 6a, 7a).

Of utmost importance to this lawsuit is the integration of administrative appeal into the application process itself. Upon receipt of an appeal, the state department immediately writes the applicant, acknowledging the request for appeal and setting a date and place for the hearing. A copy goes to the county department. Immediately upon receipt of the copy, the county department must review the applicant's situation and, if an adjustment of the appealed action is indicated, must advise the applicant and the state department accordingly within two weeks after receiving notice of the appeal. (Appellants' Br. 4a, 5a). This means that initial denial of an application is not a final county department decision. Applicants do not complete the procedure within the county department until, by *starting* an appeal, they cause the county department automatically to reassess the application.

In conclusion, the defendant submits that no reasonable person can seriously question the availability, adequacy, swiftness and economy of the administrative remedies held forth to all applicants and recipients under the welfare program.

B.

CLAIMANTS HAVE NOT EARNED FEDERAL JURISDICTION

Despite those administrative remedies, the claimants failed even to set the administrative procedure in motion by giving simple notice of appeal. No claimant even took that initial step of appeal which would have gained for her an immediate county department reconsideration. Indiana State Board of Public Welfare Regulation 2-113(b). (Appellants' Br. 4a).

The claimants argue that the administrative remedies can be ignored and bypassed because the complaint asserts violations of civil and constitutional rights. And they apparently believe that total failure of proof of such violations affects not at all their standing in the federal court.

With this the defendant, of course, does not agree. Nor did the lower court.

That administrative remedies which meet the test of adequacy and efficacy must be exhausted before resort to federal judicial relief has been the constant rule. *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S. 341 (1951); *Aircraft & Diesel Equipment Corp. v. Hirsch*, 331 U.S. 752 (1947).

It is true that plaintiffs in recent civil rights actions have been excused from the exhaustion requirement—but under special conditions. *Monroe v. Pape*, 365 U.S. 167 (1961); *McNeese v. Board of Education*, 373 U.S. 668 (1963); *Damico v. California*, 389 U.S. 416 (1967); *Houghton v. Shafer*, 392 U.S. 639 (1968); and *King v. Smith*, 392 U.S. 309 (1968). However, the defendant submits that not one of these decisions presented a situation

where there was a speedy, adequate, viable and practical administrative remedy as is available to the claimants in this case.

Thus, *Monroe v. Pape* did not involve any consideration of an administrative remedy. It simply decided that the victim of indefensible police abuse could come into federal court without first seeking state court action. The present appeal deals only with viable administrative remedies. The defendant does not question the existence of concurrent judicial remedies. But that issue does not arise here.

McNeese v. Board of Education, a school segregation case, turned on the undisputed fact that the official to whom administrative appeal would go had no power to grant relief but could only request the state attorney general to bring suit. Moreover, the administrative remedy could not be initiated without the signatures of the lesser of fifty residents or 10% of the school district. That case therefore involved an administrative remedy which was futile—and which might become merely the first step toward an inevitable lawsuit. Yet the court did not throw the exhaustion rule out the window. Its precise holding was that "when federal rights are subject to such tenuous protection, prior resort to a state proceeding is not necessary." (373 U.S. at 676).

Nothing in the state administrative remedies described in the present case can rationally be called "tenuous protection."

In *Damico v. California* the Supreme Court did not concern itself with the availability or the adequacy of the administrative remedy. But behind the decision appears a conclusive presumption which prevented an eligible child from receiving benefits within the first three months of

absence unless the mother sued for divorce or the absent father was deported or incarcerated—and which therefore afforded no room for administrative remedies. Hence, in *Damico* any administrative remedy would have been futile.

In *Houghton v. Shafer* the facts are patently different from those here. The appeal there went to the state attorney general, who was charged with strict enforcement of the entire prison correctional system, or to the commissioner of correction or his deputy, or to the prison superintendent, who told the prisoner-plaintiff to "leave well enough alone." The Supreme Court expressly found that in this circumstance administrative appeal would be a futile gesture.

In *King v. Smith* involving Alabama's "substitute father" regulation, the Supreme Court decided that a plaintiff proceeding under the Civil Rights Act and a "sufficiently substantial constitutional challenge" need not exhaust the administrative remedies. But in the case at bar, as shown earlier in this brief, the constitutional challenge is not sufficiently substantial to excuse the failure to exhaust the administrative remedies offered by the Indiana regulation and statute. Moreover, *King* describes no state administrative remedy which could dispose of the obvious constitutional issue there presented. Here, substantial constitutional questions do not exist, and the state administrative remedy is available and adequate to handle the grievances in the complaint.

Those five cases do not deny the exhaustion doctrine. This is confirmed by the opinions in *Eisen v. Eastman*, 421 F. 2d 560, (2d Cir. 1969) and *Metcalf v. Swank*, 305 F. Supp. 785 (N.D. Ill. 1969). *Eisen* recognized the difference between administrative remedies and judicial remedies in discussing the need for exhausting the former but

not the latter before coming into the federal court. The judges in *Eisen* did not believe that the Supreme Court "has decided that plaintiffs in such cases may turn their backs on state administrative remedies and rush into the federal forum whether their actions fall under the Civil Rights Act or come under general federal question jurisdiction." (421 F. 2d at 569). Likewise, the court in *Metcalf* emphatically believed that the decisions could not be read as giving civil rights plaintiffs the unqualified right to bypass state administrative remedies. (305 F. Supp. at 788).

There being no substantial constitutional questions and no violations of the Civil Rights Act, and there being administrative remedies available, adequate and speedy, the claimants here had no right to bypass and ignore the administrative remedies provided by the state of Indiana.

III

CONCLUSION

This case contains no constitutional or federal challenge of sufficient substance to justify the overthrow of the long established and sound rule that litigants should first exhaust their administrative remedies. It is presumptuous for the claimants here to bypass their administrative remedies on the assumption that their efforts would be fruitless.

The very foundation of the exhaustion rule is the wisdom of giving to an administrative agency accused of error a fair opportunity to make its own corrections. The effect of an exception to the rule in cases such as this will be marked by a vast increase in the federal case load—and even more worrisome, the substitution of federal judges

for state administrators in the day-to-day operation of welfare systems.

For these reasons as well as those advanced and supported earlier in the defendant's brief, the findings and judgment of the lower court should in all things be affirmed.

Respectfully Submitted,

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APPENDIX

Indiana Statute on dependent children—amount of assistance. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 72, p. 12; as amended Acts 1967, Chap. 270, § 1, p. 799 [Burns Cumulative Pocket Supplement, Vol. 10, Part 1, § 52-1241]:

52-1241. Dependent children—Amount of assistance.—The amount of assistance which shall be granted for any dependent child shall be determined by the county department with due regard to the resources and necessary expenditures of the family and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health, taking into consideration all needs essential to the well-being of the child. The total amount paid to any dependent child other than for medical expense, for any calendar month, shall not exceed fifty dollars [$50.00], and the total amount paid to the person essential to the well-being of such dependent child other than for medical expenses, for any calendar month, shall not exceed fifty dollars [$50.00]. The total amount paid to one [1] dependent child and to the person essential to the well-being of such dependent child other than for medical expenses, for any calendar month, shall not exceed one hundred dollars [$100]. If there is more than one dependent child or children in the same home, the total amount paid, other than for medical expense, for any calendar month, shall not exceed twenty-five dollars [$25.00] for each additional child or children; and if an incapacitated father of such children is living in the home, an amount not to exceed twenty-five dollars [$25.00] may be paid for the benefit of such incapacitated father. Provided further, That when any such

dependent child or such children or the person or persons essential to the well-being of such child or children are found to be in need of medical care, payment for any necessary care may be included in the monthly award to the recipient, even though payment for such care may increase the amount of the monthly award in excess of the maximum amounts otherwise allowed by this section or payment for such care, regardless of any maximum monthly limitations in this section, may be made directly to the person, corporation, association, institution, or agency furnishing such care. Such direct payments may be made during the lifetime of the child either before or after it reaches the maximum age for dependent children or after the death of such child, for care furnished before the child reaches the maximum age for dependent children. Each county department shall establish and submit for review and approval by the state department a plan for furnishing necessary medical care, adjusted to the medical facilities and the needs in the county.

Indiana statute on dependent children—application for assistance. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 73, p. 12 [Burns Indiana Statutes Annotated 1964 Repl. § 52-1242]:

52-1242. Dependent children—Application for assistance.—Application for assistance for a dependent child under the provisions of this act [chs. 10-14 of this title] shall be made to the county department of the county or district in which the dependent child resides. The application shall be in writing, or shall be reduced to writing, and shall be made in the manner and upon the form prescribed by the state department. The application shall be made and verified by the oath of the parent or guardian of or other person standing in loco parentis to such dependent child. Every such application shall contain information as to the age and residence of the child and such other information

as may be required by the rules and regulations of the state department. One [1] application may be made for several children of the same family if they reside with the same person.

Indiana statute on dependent children—investigation. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 74, p. 12 [Burns Indiana Statutes Annotated 1964 Repl. § 52-1243]:

> **52-1243. Dependent children — Investigation.** — Whenever the county department shall receive a notification of the dependency of a child or an application for assistance, an investigation and record shall promptly be made of the circumstances of such child to ascertain the dependency of the child, or the facts supporting the application made under the provisions of this act [chs. 10-14 of this title], and such other information as may be required by the rules of the state department. The investigation shall include a visit to the home of the child and of the person who will have the custody of the child during the time assistance is granted.

Indiana statute on dependent children—granting of assistance. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 75, p. 12 [Burns Indiana Statutes Annotated 1964 Repl. § 52-1244]:

> **52-1244. Dependent children—Granting of assistance.**—Upon the completion of such investigation, the county department shall decide whether the child is eligible for assistance under the provisions of this act [chs. 10-14 of this title] and shall determine the amount of such assistance and the date on which such assistance shall begin. In determining the amount of such assistance, due account shall be taken of any income or property of the child and of any support which he may receive from other sources. The county department shall make an award which, including any

subsequent modification thereof, shall be binding upon the county and shall be complied with by the county until such award or modified award is vacated. The county department shall notify the applicant and the state department of its decision in writing. Such assistance shall be paid monthly to the recipient upon warrant of the county auditor, from the county welfare fund, upon a verified schedule of the recipients and the amount payable to each such recipient, prepared and verified by the county director, in accordance with the awards made by the county board. All schedules shall be filed in the form prescribed by the state department.

Indiana State Board of Public Welfare Regulation 2-404, Burns Ind. Admin. Rules & Regs. (52-1244)-1 (1969):

(52-1244)-1. Payment of assistance to dependent children and medical care.—(a) All applications for assistance to dependent children shall be acted upon by the county board of public welfare or by the county director of public welfare upon the authority of the county board in sufficient time to permit payment of approved awards to be made within thirty [30] days following the date of application. Such awards shall be due and payable either on the first or sixteenth day of the month and shall be effective the first day of the month. Payment shall be made for necessary medical care furnished on or after the first day of the month in which the application was made. No award of assistance, except for necessary medical care shall be for any period of time other than for a full month and shall not exceed the lawful monetary maximum.

All changes of award of assistance to dependent children by the county board or the county director upon the authority of the county board shall be effective, due and payable on the first day of the month following approval.

(b) When a recipient who is otherwise eligible has resources which meet his needs temporarily or meet his need with the exception of existing medical needs, the monetary amount of which cannot be determined, the county department of public welfare shall change the assistance award to an amount "to be determined." When the extent of need is established, the award shall be changed to a definite amount.

(c) Payment of claims for medical services furnished recipients shall be made in accordance with the county department's medical plan. The effective date for the payment for such medical care shall be the first of the month following board action.

(d) Each county medical plan shall be construed to include, as a necessary expenditure for medical care, payment of the enrollment fee, or premiums, enabling parents 65 years of age or over in assistance to dependent children cases receiving money payments otherwise eligible to be insured for medical services under Part B [F.C.A., tit. 42, §§ 1395j-1395w] of Title XVIII. Such fees or premiums shall be paid to the bureau of health insurance of the social security administration by the state department of public welfare.

(e) On and after July 1, 1966, each county medical plan shall be construed to include as a necessary expenditure, a fee schedule for parents 65 years of age or over in assistance to dependent children cases insured under Title XVIII [F.C.A., tit. 42, §§ 1395-1395kk] with maximum limitations for medical services determined pursuant to the rules adopted by the department of health, education, and welfare for the federal government's payment for medical services under Title XVIII.

(f) Claims for medical services furnished to parents 65 years of age or over in assistance to dependent children cases insured under Parts A [F.C.A., tit. 42, §§ 1395c-1395i] and B [F.C.A., tit.

42, §§ 1395j-1395w] of Title XVIII shall not be submitted for payment directly by the person, corporation, association, institution or agency furnishing such services to the carrier designated by the state department of public welfare. The designated carrier will process and pay all such claims and bill the state department of public welfare for that portion not payable by the federal government under the provisions of Parts A and B of Title XVIII.

(g) The state department of public welfare upon the receipt of proper billings from the bureau of health insurance of the social security administration and the designated carrier will make the necessary payment from state funds. The county department of public welfare's share of such payments will be adjusted by the state department in the calculation of monthly assistance reimbursement to the county department.

Indiana statute on dependent children—certificates. Indiana Acts 1936 (Spec. Sess.) Chap. 3, § 76, p. 12 [Burns Indiana Statutes Annotated 1964 Repl. § 52-1245]:

52-1245. Dependent children—Certificates.—When the assistance is granted to any dependent child under the provisions of Part 3 [§§ 52-1201—52-1279] of this act, the award so made, designating the name and residence of the recipient, the amount of the award, the date when the assistance to the recipient is to begin, and such other facts as the state board shall prescribe, shall be entered on a certificate, the form of which shall be prescribed by the state board. Four [4] copies of such certificate shall be prepared, each certificate shall bear the impress of the seal of the department, and one [1] copy thereof shall be retained by and filed in the office of the county department, one [1] copy shall be filed with the state department, one [1] copy shall be filed in the office of the county auditor and one [1] copy shall be given to the recipient.

Indiana statute on Dependent children—appeal to state department. Indiana Acts 1936 (Spec. Sess.), Chap. 3, § 76, p. 12 [Burns Indiana Statutes Annotated 1964 Repl. § 52-1246]:

> **52-1246. Dependent children—Appeal to state department.**—The county department shall at once report to the state department its decision upon each such application for assistance to a dependent child. If any such application is not acted upon by the county department within a reasonable time after the filing of the application, or if such application is denied, or if assistance previously granted is modified or revoked, the applicant may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such an appeal, give the applicant an opportunity for a fair hearing thereon. The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigations as it may deem necessary, and shall make such decision relative to the granting of assistance and the amount of the assistance to be granted as, in its opinion, is justified and in conformity with the provisions of this act [chs. 10-14 of this title]. All decisions of the state department made in conformity with the terms of this act shall be binding upon the county department involved and shall be complied with by such county department and shall have the same force and effect as decisions of the county department from which appeals are not taken.

Indiana statute on Township Trustee as overseer of poor. Indiana Acts 1935, Chap. 116, Article 1, p. 432 [Burns Indiana Statutes Annotated 1964 Repl. § 52-144]:

52-144. Poor relief — Township trustees — Overseers.—The township trustees of the several townships of this state shall be ex officio the overseers of the poor within their respective townships, and shall perform all duties with reference to the poor of their respective townships that may be prescribed by law. Every township trustee shall, in discharging the duties prescribed in this act [§§ 52-144—52-176, 52-177—52-181], be designated an overseer of the poor.

Indiana statute as to duties of Trustee and service to be rendered. Indiana Acts 1967, Chap. 251, Article 1, p. 655 [Burns Cum. Pocket Supp., Vol. 10, Part 1, § 52-148]:

52-148. Duties of trustees—Service to be rendered.—The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain (in) a charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished. The township trustee may, in cases of necessity, authorize the payment from township poor relief funds for water, gas and electric services, including the payment of delinquent bills for such services, when necessary to prevent their termination or to restore terminated service. He may, in cases of necessity, authorize the payment from township poor relief funds for lunches furnished to any child by the school in which the child attends classes, whenever the parent or other person responsible for such child is found to be financially unable to pay for such lunches. As a means of determining financial ability to pay for school lunches, the township trustee shall have authority to require the parent

or other person responsible for the child to subscribe to an affidavit as provided for in sec. 9 [§ 52-152] of this act and he may make an investigation pursuant thereto, or, he may accept a certified statement as hereinafter provided for from either the director of the county department of public welfare of the county in which the child resides or the attendance office of the school corporation in which the child attends classes. The certified statement shall convey to the township trustee the information that the person making the certificate has made diligent inquiry into the financial status of the parent or other person responsible for the child and that to the best of his knowledge and belief, the parent or other person responsible for the child is not financially able to pay the cost of the lunches furnished by the school.

Indiana statute on temporary aid by Township Trustee. Indiana Acts 1935, Chap. 116, Article 7, p. 432 [Burns Indiana Statutes Annotated 1964 Repl. § 52-150]:

52-150. **Temporary aid — When.** — Whenever an overseer shall ascertain by investigation that any poor person or persons or family require assistance, he shall furnish to them such temporary aid as may be necessary for the relief of immediate and pressing suffering; before any further final or permanent relief in any case is given, the overseer shall consider whether distress can be relieved by other means than an expenditure of township funds.

Indiana State Board of Public Welfare Regulation 2-113.

Reg. 2-113. Appeals.

(a) If the county department of public welfare refuses to accept an application for any type of public assistance as provided for in the Welfare Act of 1936 [Burns' Stat., §§ 52-1001 — 52-1417], as amended; or any other law pertaining to public

assistance; or if an application is not acted upon within the time limit established by the state department of public welfare and approved by the department of health, education, and welfare; or if an applicant or recipient is dissatisfied with the amount of the award; or if an application is denied; or if an applicant or recipient believes his civil or constitutional rights have been violated; or if an applicant or recipient believes that the state or county department's policies, including work requirements, are not reasonable or equitable and that these affect him adversely; or if the applicant or recipient believes that restrictions have been placed on his assistance payment that violate his right to an unrestricted money payment, the applicant or recipient may appeal to the state department of public welfare.

Such appeal shall be in writing over the signature of the applicant or recipient or person who is entitled to or who has been designated to act in his behalf and shall be filed with the county or state department of public welfare within 30 days following either the action or issue being appealed. Every applicant or recipient shall be notified of his right to appeal to the state department of public welfare at the time of his application, and concurrently with each grant, denial or modification of award.

(b) Upon the receipt of an appeal, the state department immediately will write the appellant, with a copy to the county department, acknowledging the request for an appeal and setting a date and place for such appeal hearing within three [3] weeks from the date of receipt of the request for an appeal. The county department will review the appellant's situation immediately and if an adjustment of the appealed action is indicated will advise the appellant and the state department ac-

cordingly within two [2] weeks after the receipt of the notice of an appeal.

If the appeal is based on a denial of assistance because of a state department decision regarding permanent and total disability or blindness, the appropriate staff member of the state department will review the evidence on which the original decision was based. Additional medical and/or social information may be requested for use in reviewing the original decision.

The appellant may, if he desires to do so, withdraw his request for a hearing or postpone the hearing pending any adjusting action. If not, the hearing will proceed as scheduled.

(c) If the action taken by the county department, either prior to the hearing or as a result of the decision on a fair hearing corrects a previous agency action, the effective date of the correcting action shall be retroactive to the date the original incorrect action was effective. If a delay in action on an application is being corrected, the effective date of the correcting action shall be the first of the month following the month in which action should have been taken. If action is being taken to change an award because of a reported change in circumstances, the correcting action shall be retroactive to the first of the month following the month in which the action should have been taken.

If the state department reverses its decision regarding permanent and total disability or blindness either prior to the hearing or as a result of the additional medical evidence obtained in the hearing process, the county department, or in a blind assistance case the state department, will rescind the action taken on the application and promptly approve assistance retroactively to the

first of the month following the month in which the original action was taken, if the appellant was otherwise eligible.

(d) Any fair hearing shall be held at a place convenient to the appellant in the county in which he resides and shall be conducted by an official or employee of the state department of public welfare duly designated to hold such hearings. The hearing shall be informal and shall provide an opportunity for all persons who have pertinent information to be heard promptly. The appellant may be represented by any person of his own choice, including legal counsel if he so desires. The appellant or his representative shall have full opportunity to question or refute any evidence presented by the state or county department and to examine all documents and records used at such hearing, and said departments shall have the same opportunity as the appellant.

The hearing officer, with the consent of the appellant or his representative, may continue the hearing in order to secure additional information pertinent to the case, or the appellant or his representative may request a continuance in order to obtain such information.

(e) When the issue of the appeal involves a medical determination regarding disability, incapacity of a parent, or the ability of an assistance to dependent children family member to take employment, the appellant shall be given an opportunity to obtain a new medical evaluation from a medical source satisfactory to him and to the state and county department of public welfare. Such medical evaluation shall be secured in accordance with the provisions of the county medical plan. The hearing officer will consider the medical evidence in the record presented at the hearing and may request additional medical evidence. The as-

sessment of such medical authorities will be reported in writing or by personal testimony as an expert witness for the hearing record. The medical assessment must be from a person or persons other than those involved in the original decision.

When the appeal is based on blindness or degree of vision, the supervising opthalmologist shall designate an appeal examiner and the consultant for blind assistance and eye treatment will arrange for the eye examination and report.

The results of the examination shall be provided the hearing officer and the hearing continued with the appellant being notified of such decision and his right to a further review by the state board of public welfare.

(f) Within three [3] weeks after the conclusion of a fair hearing, the person who conducted the hearing shall report his findings of fact and decision upon the hearing. Such appeal decisions will be based on the law, rules and regulations of the state department of public welfare, and officially adopted policies and shall be signed by the administrator or a designee of the administrator and/or the director of the division of public assistance. A copy of the decision shall be sent to the appellant and to the county department of public welfare within two [2] weeks of the date of receiving the report of the hearing officer. The appellant shall also be notified that the state board of public welfare will review his case personally if a specific request is received by the state department from either the appellant or the county department of public welfare within 10 days following the receipt of the appeal decision.

(g) The decision of the state department of public welfare shall be binding upon the county department of public welfare and shall be acted upon

immediately by the county director or the county board following the receipt of the decision. The effective date of the action shall be set forth in the decision.

The county department shall notify the state department within 48 hours of the action taken. Such decision of the state department does not preclude the county department of public welfare from modifying the award thereafter, under the provisions of the Welfare Act of 1936, as amended, to meet changed conditions.

Indiana State Board of Public Welfare Regulation 2-402(b):

(b) When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six [6] months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and reasons for such action.

Social Security Act, § 406(a), 42 U.S.C. 606(a):

§ 406(a). When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence

maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment * * *.

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IN THE

Supreme Court of The United States

OCTOBER TERM 1970

~~NO. 6744~~ 70-5082

LA VERNE CARTER, et al.,
Appellants (Plaintiffs below),

v.

WAYNE STANTON, et al.,
Appellees (Defendants below).

On Appeal from the United States District Court
for the Southern District of Indiana
Indianapolis Division

RESPONSE OF APPELLEE STANTON TO BRIEF FOR UNITED STATES AS AMICUS CURIAE

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IN THE

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LA VERNE CARTER, et al.,
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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RESPONSE OF APPELLEE STANTON TO BRIEF FOR UNITED STATES AS AMICUS CURIAE

Appellee Stanton welcomes the view of the government that Indiana State Welfare Regulation 2-402(b) falls within the state discretion accorded by the Social Security Act. (Amicus Curiae Brief 12, 30).

It is unfortunate, however, that the government succumbs to the same fallacy as have the claimants, in mistakenly treating the state regulations as an absolute minimum requirement for AFDC aid in the "continued

absence" situations. (Ibid 29). Apparently the posture of the government in this respect was adopted without careful analysis of either the regulation or the evidence of its application—and, of course, before receipt of the Stanton brief recounting the evidence.

The government is totally wrong in its notion that the regulation absolutely and rigidly requires a parental separation for at least six months before the departed parent can be considered continually absent from home. (Ibid 29). The defendant Stanton's brief explodes the government's error. The record presents numerous factual examples of AFDC benefits granted without awaiting the six-month period, some of those examples involving the parties to this litigation as well as the witnesses. (Stanton's Brief 6-8).

In view of the flexibility in the measure of "continued absence" as demonstrated in the brief for the defendant Stanton, the lack of substantiality of any constitutional or federal issue becomes obvious.

Therefore, the lower Court decision should be affirmed.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

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IN THE

Supreme Court of the United States

No. 70-5082

LAVERNE CARTER, *et al.*,

Appellants,

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WAYNE STANTON, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

REPLY BRIEF FOR APPELLANTS

Appellee William Sterrett ("appellee") has questioned the jurisdiction of this Court to hear this appeal under 28 U.S.C. § 1253. Citing *Wilson v. Port Lavaca*, 391 U.S. 352 (1968) and *Mengelkoch v. Industrial Welfare Commission*, 393 U.S. 83 (1968), appellee argues that the decision of the District Court herein was equivalent to a dissolution of the three-judge panel as improperly convened and that, therefore, this appeal should have been taken to the United States Court of Appeals for the Seventh Circuit. These arguments misconstrue the nature of the District Court's judgment in an effort to bring it within the rule of the *Wilson* and *Mengelkoch* cases and overlook the substantial

distinctions between those decisions and the present case. Appellee also contends, without citation of authority, that the judgment herein was not an "* * * *order* granting or denying * * * an interlocutory or permanent injunction * * *," as required by § 1253. This argument ignores a long line of recent cases in which this Court has accepted direct appeals from judgments of three-judge courts dismissing complaints.

I.

THE SUPREME COURT HAS JURISDICTION OVER THIS APPEAL SINCE A THREE-JUDGE COURT WAS PROPERLY CONVENED UNDER 28 U.S.C. § 2281.

The issue of whether a substantial constitutional question requiring the convening of a three-judge court under § 2281 is presented must be determined by the allegations of the complaint. *Ex parte Poresky*, 290 U.S. 30, 32 (1933). It is the duty of the single district judge before whom the action is pending to make an *initial* determination of this question. *Idlewild Liquor Corp. v. Epstein*, 370 U.S. 713, 715 (1962); *Water Service Co. v. Redding*, 304 U.S. 252, 254 (1938). If the question is "fairly open to debate," however, a three-judge court must be convened. *Ex parte Poresky, supra.*

The jurisdiction of this Court of a direct appeal under § 1253 depends upon (1) whether the three-judge court entered an order granting or denying an injunction, *Mitchell v. Donovan*, 398 U.S. 427 (1970), and (2) whether the action, suit or proceeding was required to be heard and determined by three judges, or, as frequently stated, whether the three-judge court was properly convened. *Moody v. Flowers*, 387 U.S. 97, 99 (1967). The presence of the latter element is not determined by the nature of the decision rendered or by the way the facts turn out. *Florida Lime Growers v. Jacobsen*, 362 U.S. 73 (1960); *Mosher v. City of Phoenix*, 287 U.S. 29 (1932). As stated in *United States*

v. Georgia Pub. Serv. Comm'n., 371 U.S. 285, 287-88 (1963):

> "Once convened the case can be disposed of below or here on any ground, whether or not it would have justified the calling of a three-judge court."

A. A Direct Appeal Is Not Foreclosed Where A Three-Judge Court Dismisses A Case For Want Of A Substantial Constitutional Question.

The District Court in *Wilson v. Port Lavaca*, 285 F. Supp. 85 (S.D. Tex. 1968) held that, since neither defendant enforced or executed a state statute and since no attack was made upon the constitutionality of a state statute, the plaintiff's claim was not "one which must be heard by a three-judge court." (285 F. Supp. at 87) The court then proceeded to rule that either equitable or declaratory relief would be inappropriate and dismissed the action, with the District Judge adopting this judgment as his own. Upon appeal to this Court, it was held that the situation was similar "to that which results when a single judge declines to convene a three-judge court and denies relief: an appeal lies to the appropriate United States Court of Appeals, and not to this Court." *Wilson v. Port Lavaca*, 391 U.S. 352 (1968). In *Mengelkoch v. Industrial Welfare Commission*, 284 F. Supp. 950 (C.D. Cal. 1968), the three-judge court granted a motion to dissolve on the ground that the complaint failed to present a substantial constitutional issue. The single district judge then dismissed the case under the abstention doctrine. Upon appeal, this Court held that, when "a three-judge court dissolves itself for want of jurisdiction, an appeal lies to the appropriate Court of Appeals * * *." *Mengelkoch v. Industrial Welfare Commission*, 393 U.S. 83-84 (1968). It is significant that the Court cited *Wilson* as direct authority for this proposition.

In each of the above cases, therefore, the three-judge courts expressly found that they had been improperly convened and expressly or by implication left the remaining

issues for adjudication by the single district judge. As a result, the only reviewable order in each instance was entered by the single district judge. No reviewable order was entered by the three-judge panel, and, hence, a direct appeal was not appropriate. To the contrary, the three-judge court here in no way expressed the view that *it* had no jurisdiction under 28 U.S.C. § 2281. All three judges signed the Entry (App. 212) dismissing the complaint. It is also significant that the three-judge panel, in addition, found that the statutory questions presented were insubstantial and proceeded to decide that there was no federal jurisdiction under 28 U.S.C. § 1343(3)(4). Thus, no issues were left for adjudication by the single judge.

In these circumstances, decisions of this Court subsequent to *Wilson* and *Mengelkoch* establish that a direct appeal is appropriate. In *Whitney Stores, Inc. v. Summerford,* 393 U.S. 9 (1968), decided after *Wilson* and two weeks before *Mengelkoch,* for example, the Court affirmed on the merits the dismissal of a case by a three-judge panel on the basis that no substantial federal question was involved. Similarly, in *Sullivan v. Alabama State Bar,* 394 U.S. 812 (1969) and *Watermeier v. Louisiana Stadium and Exposition District,* 398 U.S. 955 (1970) decisions of three-judge courts dismissing complaints, respectively, for failure to present a substantial constitutional question and for failure to present any federal constitutional question were affirmed on the merits. More recently, in *Gaytan v. Cassidy,* 403 U.S. 902 (1971) a similar three-judge court judgment was vacated and remanded on direct appeal. These cases demonstrate that, when a single district judge initially determines that a complaint raises a substantial constitutional question and a three-judge court is convened, this Court has jurisdiction over a direct appeal from a judgment of *that* court dismissing the case, even where the dismissal is based on a failure to present substantial federal questions.

B. Even If Wilson and Mengelkoch Apply To Three-Judge Court Judgments Of Dismissal, A Direct Appeal Is Proper Here Since The District Court Judgment Was Not A Poresky-Type Determination And Since An Extensive Evidentiary Hearing Was Required.

Appellee Sterrett argues in his Brief (pp. 7-9) that the judgment of the District Court should be construed as a dissolution of the three-judge panel, leaving the remaining issues for disposition by the single judge. The simple answer to this analysis is that, if the three-judge court had intended its jurisdictional finding as a finding under § 2281 in the sense of *Ex parte Poresky*, 290 U.S. 30 (1933), it would have so indicated and dissolved itself. As stated above, however, the three-judge panel made no determination that it had been improperly convened. The explanation for the court's action is not that it made a procedural error, but rather that its judgment was not based on a lack of jurisdiction within the meaning of *Poresky* and, therefore, dissolution would have been inappropriate.

This is made plain by the fact that, after an extensive evidentiary hearing, the court's *only* finding was that none of the claimants had exhausted her administrative remedies. The significance of this finding with respect to the court's ruling on substantiality is clarified by a consideration of *Metcalf v. Swank*, 305 F. Supp. 785 (N.D. Ill. 1969), one of the primary authorities cited and relied upon by the defendants below. The District Court in that case dismissed the complaint in part because it stated no substantial constitutional claim to "justify the assumption of jurisdiction ** * * absent exhaustion of available state administrative remedies.*" (305 F. Supp. at 791) (emphasis added). The judgment herein is similarly inextricably based on the absence of exhaustion and is internally consistent only when so construed.

A judgment that a constitutional question is rendered insubstantial by a failure to exhaust administrative remedies is *not* a decision of the *Poresky* type which defeats § 1253

jurisdiction. A determination that exhaustion is required or that its absence renders constitutional questions insubstantial may not be made by a single judge, *Idlewild Liquor Corp. v. Epstein*, 370 U.S. 713 (1962), and the three-judge court was therefore properly convened to hear and determine this issue.[1] The sole review of such a judgment is in this Court.

Secondly, even if it is assumed for the sake of argument that the District Court held that the complaint did not pass the *Poresky* test, it must be concluded that the three-judge court was nevertheless properly convened since its decision required an extensive examination of the facts. The court did not reach its decision that the *pleadings* presented no substantial federal question solely by an examination thereof and oral argument.[2] In rendering its judgment, the court heard ten witnesses for the plaintiffs and six witnesses for the defendants. Any resolution of the issue of substantiality which demands such an evidentiary hearing is *solely* the function of the three-judge panel. *Gong v. Kirk*, 375 F.2d 728 (5th Cir. 1967); *cf. Calloway v. Briggs*, 443 F.2d 296 (6th Cir. 1971).

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[1]Under such analysis, the actions of the three-judge panel in deciding the statutory issue, which would otherwise be for a single judge, and in dismissing the complaint by an order signed by three judges become proper and understandable.

[2]It is absolutely plain that the court's entry with respect to substantiality is limited to the pleadings, as affected by the failure to exhaust administrative remedies. The Amended Entry reads: "We have examined the pleadings before us and find no substantial federal question involved * * *." (App. 212). Sterrett's assertion that the court must have resolved all conflicts in the evidence in his favor (Appellee's Brief p. 14) is, therefore, misconceived.

C. The Question of Whether the Three-Judge Court Was Properly Convened Is A Question for Determination by This Court.

Even if for the sake of argument it is conceded that appellee Sterrett's interpretation of *Wilson* and *Mengelkoch* and the lower court's decision is correct, there is a fundamental defect in the argument made by appellee. That argument appears to assume that, in determining its own jurisdiction to hear this appeal, this Court is bound by the determination made by the District Court. It is elementary, however, that in deciding the question of its own jurisdiction under § 1253 this Court will consider itself the question of whether the three-judge court was properly convened. As stated by Mr. Justice Brandeis in *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934):

> "An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review."

See, also, *Defiance Water Co. v. Defiance*, 191 U.S. 184 (1903) and *Continental Nat. Bank v. Buford*, 191 U.S. 119 (1903).

Thus, the question of whether the complaint herein presented a substantial constitutional question and, hence, of whether the three-judge court was properly convened will be considered anew by this Court in determining its own jurisdiction. This procedure was followed in *Schneider v. Smith*, 390 U.S. 17 (1968), *Swift & Co. v. Wickham*, 382 U.S. 111 (1965), *United States v. Georgia Pub. Serv. Comm'n.*, 371 U.S. 285 (1963), and *Water Service Co. v. Redding*, 304 U.S. 252 (1938), in each of which cases this Court determined for itself whether the constitutional questions presented were or were not substantial. By the same token, the issue of whether three-judge courts were properly convened was considered and decided on other grounds in *Allen v. State Board of Elections*, 393 U.S. 544 (1969), *Flast v. Cohen*, 392 U.S. 83 (1968), *Moody v. Flowers*, 387 U.S. 97 (1967), *Pennsylvania P.U.C. v. Pennsylvania R.R.*,

382 U.S. 281 (1965), and *Florida Lime Growers v. Jacobsen*, 362 U.S. 73 (1960).

Accordingly, the decision of the District Court is by no means dispositive on the issue of this Court's jurisdiction, and, for the reasons set forth in Appellant's Brief, it should determine that substantial constitutional questions have been presented for decision.

II

A FINAL JUDGMENT DISMISSING A COMPLAINT IS AN ORDER DENYING AN INJUNCTION

Appellee Sterrett's second argument is apparently premised on the proposition that only an order denying an injunction on the merits is an "order" permitting a direct appeal under § 1253. No intent so to limit direct appeals is evidenced by the language of the statute. A final judgment dismissing a complaint has the same effect as an order denying an injunction on the merits, and it should be so treated for purposes of § 1253.

This Court has in recent years accepted on direct appeal judgments of three-judge courts dismissing actions for failing to present a case for federal relief, *Samuels v. Mackell*, 401 U.S. 66 (1971) and *Black Unity League v. Miller*, 394 U.S. 100 (1969), for failure to state a claim upon which relief could be granted, *Lewis v. Martin*, 396 U.S. 900 (1970) and *Moore v. Ogilvie*, 394 U.S. 814 (1969), for failure to present a substantial constitutional question, *Watermeier v. Louisiana Stadium and Exposition District*, 398 U.S. 955 (1970), *Sullivan v. Alabama State Bar*, 394 U.S. 812 (1969) and *Whitney Stores, Inc. v. Summerford*, 393 U.S. 9 (1968), for lack of standing, *Granite Falls State Bank v. Schneider*, 402 U.S. 1006 (1971), *Richardson v. Kennedy*, 401 U.S. 901 (1971) and *Flast v. Cohen*, 392 U.S. 83 (1968), for lack of subject matter jurisdiction, *Hornbeak v. Hamm*, 393 U.S. 9 (1968), for lack of a case or controversy, *Florida Lime Growers v. Jacobsen*, 363 U.S.

73 (1960), and under the abstention and political question doctrines. *Zwickler v. Koota*, 389 U.S. 241 (1967); *Baker v. Carr*, 369 U.S. 186 (1962). These cases conclusively demonstrate that any final judgment of dismissal entered by a three-judge court which, in effect, denies the request for an injunction is an "order" within the scope of § 1253.

CONCLUSION

The jurisdiction of this Court has been properly invoked under 28 U.S.C. § 1253, and it should proceed to the merits of this appeal and reverse the judgment of the District Court.

Respectfully submitted,

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Of Counsel:

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APPENDIX

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1253.

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

28 U.S.C. § 2281.

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

CARTER ET AL. v. STANTON, DIRECTOR, MARION COUNTY DEPARTMENT OF PUBLIC WELFARE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 70-5082. Argued November 8, 1971—Decided April 3, 1972

Appellants' challenge to the Indiana welfare regulation that provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months, unless there are exceptional circumstances of need, was dismissed for failure to exhaust administrative remedies, and alternatively on the grounds of lack of jurisdiction and failure of the pleadings to present a substantial federal question. *Held:* The District Court plainly had jurisdiction, and exhaustion is not required in the circumstances of this case. *Damico* v. *California*, 389 U. S. 416. If that court's characterization of the federal question as insubstantial was based on the face of the complaint, it was error; if the court treated the motion to dismiss as one for summary judgment its order is unilluminating as to the relevant fact or the applicable law, and was improperly entered.

Vacated and remanded.

Jon D. Noland argued the cause for appellants. With him on the briefs were *John T. Manning* and *David F. Shadel.*

Robert W. Geddes argued the cause for appellee Stanton. With him on the brief were *Harold W. Jones* and *Carl J. Meyer. Mark Peden*, Deputy Attorney General of Indiana, argued the cause for appellee Sterrett. With him on the brief were *Theodore L. Sendak*, Attorney General, *William F. Thompson*, Assistant Attorney General, and *William F. Harvey.*

Solicitor General Griswold and *Richard B. Stone* filed a brief for the United States as *amicus curiae.*

PER CURIAM.

Appellants are women who contend that an Indiana welfare regulation governing eligibility for state and federal aid to dependent children contravenes the Fourteenth Amendment and the Social Security Act, 49 Stat. 627, as amended, 42 U. S. C. § 602 (a)(10). The regulation provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months, unless there are exceptional circumstances of need. Burns Ind. Admin. Rules & Regs. (52–1001)–2 (1967). Appellants brought this action in the United States District Court for the Southern District of Indiana, basing jurisdiction on 42 U. S. C. § 1983 and 28 U. S. C. § 1343, and seeking both declaratory and injunctive relief. A three-judge court was convened pursuant to 28 U. S. C. § 2281. After a "preliminary hearing on defendants' " motion to dismiss "at which the court" received evidence upon which to resolve the matter, the court dismissed the complaint on the ground that none of the claimants had exercised her right under Indiana law to appeal from a county decision denying welfare assistance, Burns Ind. Admin. Rules & Regs. (52–1211)–1 (Supp. 1970), and therefore appellants had failed to exhaust administrative remedies. In the alternative, the court held that the pleadings did not present a substantial federal question and that the court lacked jurisdiction under 42 U. S. C. § 1983 and 28 U. S. C. §§ 2201, 2202. *Carter* v. *Stanton,* No. IP 70–C–124 (SD Ind., Dec. 11, 1970). This direct appeal followed and we noted probable jurisdiction. 402 U. S. 994 (1971).

Contrary to the State's view, our jurisdiction of this

appeal under 28 U. S. C. § 1253 is satisfactorily established. *Sullivan* v. *Alabama State Bar*, 394 U. S. 812, aff'g 295 F. Supp. 1216 (MD Ala. 1969); *Whitney Stores, Inc.* v. *Summerford*, 393 U. S. 9, aff'g 280 F. Supp. 406 (SC 1968). Also, the District Court plainly had jurisdiction of this case pursuant to 42 U. S. C. § 1983 and 28 U. S. C. § 1343. *Damico* v. *California*, 389 U. S. 416 (1967). *Damico*, an indistinguishable case, likewise establishes that exhaustion is not required in circumstances such as those presented here. Cf. *McNeese* v. *Board of Education*, 373 U. S. 668 (1963); *Monroe* v. *Pape*, 365 U. S. 167 (1961).

Finally, if the court's characterization of the federal question presented as insubstantial was based on the face of the complaint, as it seems to have been, it was error. Cf. *Dandridge* v. *Williams*, 397 U. S. 471 (1970); *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); *Damico* v. *California*, *supra*. But it appears that at the hearing on the motion to dismiss, which was based in part on the asserted failure "to state a claim upon which relief can be granted" (App. 19), matters outside the pleadings were presented and not excluded by the court. The court was therefore required by Rule 12 (b) of the Federal Rules of Civil Procedure to treat the motion to dismiss as one for summary judgment and to dispose of it as provided in Rule 56. Under Rule 56, summary judgment cannot be granted unless there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. If this is the course the District Court followed, its order is opaque and unilluminating as to either the relevant facts or the law with respect to the merits of appellants' claim. In this posture of the case, we are unconvinced that summary judgment was properly entered. The judgment of

the District Court is therefore vacated and the case is remanded to that court for proceedings consistent with this opinion.

So ordered.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS.

I agree that both this Court and the District Court have jurisdiction to entertain this case and that the appellants were not required to exhaust administrative remedies before launching their challenge. But, although the District Court should have made more complete findings of fact and conclusions of law, I would not remand simply on this score but would hold that the appellants are entitled to judgment.

The problem is simple and should be disposed of here.

The federal Act defines a "dependent child" as a "needy child . . . who has been deprived of parental support or care by reason of . . . continued absence from the home." [1] Indiana by its Board of Public Welfare has adopted the federal definition of "needy child." [2]

The term "continued absence from the home" is not defined in the federal Act, though HEW recommends "that no period of time be specified as a basis for establishing continued absence as an eligibility factor." [3] Indiana, however, has established by rule a definition of "continued absence" in case of "desertion or separation." In those two instances it makes "continued absence" mean that "the absence shall have been continuous" for at least

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[1] 49 Stat. 629, as amended, 42 U. S. C. § 606 (a).

[2] Ind. State Bd. of Pub. Welfare Reg. 2-400 (a).

[3] Dept. of Health, Education, & Welfare Handbook of Public Assistance Administration, pt. IV, § 3422.5 (1968).

six months,[4] except when the department of welfare finds there are "exceptional circumstances of need."

A dependent child gets aid immediately and continuously in case the parent is incarcerated or in case the parent is inducted into the armed services. The six-month rule creates a separate class of needy children who by the federal standard may be as "needy" as those in the other two categories.

The federal Act directs that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals."[5] The federal regulation requires decisions on applications to be made "promptly" and "not in excess of" 30 days and that the assistance check or notification of denial be mailed within that period.[6] As noted, the federal Act contains no waiting period to establish "continued absence." And the HEW Handbook, already referred to,[7] states as respects "continued absence" that "[a] child comes within this interpretation if for any reason his parent is absent."[8]

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[4] Burns, Ind. Admin. Rules & Regs. (52-1001)-2 (1967): "When the continued absence is due to desertion or separation, the absence shall have been continuous for a period of at least six [6] months prior to the date of application for assistance to dependent children; except that under exceptional circumstances of need and where it is determined that the absence of a parent is actual and bona fide an application may be filed and a child may be considered immediately eligible upon a special finding of the county department of public welfare setting forth the facts and reasons for such action."

[5] 42 U. S. C. § 602 (a) (10).

[6] 45 CFR § 206.10 (3), 36 Fed. Reg. 3864.

[7] N. 3, *supra*.

[8] Part IV, § 3422.2, of the Handbook provides:

"Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care under the following circumstances:

"1. When the parent is out of the home;

"2. When the nature of the absence is such as either to interrupt

Here, as in *California Human Resources Dept.* v. *Java*, 402 U. S. 121, 135, the State's program "tends to frustrate" the Social Security Act. *King* v. *Smith*, 392 U. S. 309, "establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." *Townsend* v. *Swank*, 404 U. S. 282, 286. While a State has a legitimate interest in preventing fraud, there are, as we said in *Shapiro* v. *Thompson*, 394 U. S. 618, 637, "less drastic means" available "to minimize that hazard." Rather than remanding for a lower court determination of the law of the case, the merits ought to be decided now inasmuch as (a) the facts are essentially undisputed, (b) the appellants' claim based on the federal Act is plainly correct, and (c) further litigation would work a hardship upon welfare recipients affected by the Indiana rule. See generally Note, Individualized Criminal Justice In The Supreme Court: A Study Of Dispositional Decision Making, 81 Harv. L. Rev. 1260 (1968); Bell, Appellate Court Opinions And The Remand Process, 2 Ga. L. Rev. 526, 536 (1968).

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or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

"3. When the known or indefinite duration of the absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

"A child comes within this interpretation if for any reason his parent is absent, and this absence interferes with the child's receiving maintenance, physical care, or guidance from his parent, and precludes the parent's being counted on for support or care of the child. For example: The child's father has left home, without forewarning his family, and the mother really does not know why he left home, nor when or whether he will return."

The Indiana regulation so plainly collides with the federal Act that I would end this frivolous defense to this welfare litigation by deciding the merits and reversing by reason of the Supremacy Clause.